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ABSTRACT

The investigation and evaluation of American Indian education carried on by a special senatorial subcommittee on Indian education over a 2-year period created concern over the "organization question." The subcommittee came to believe that no matter how strong, how good, or how well funded were the programs for educating American Indians, these programs would continue to founder without a modern, streamlined, and responsive administrative structure to carry them out. The question of organizing the Federal Government's responsibilities for Indian education has 4 principal components: the location in the Federal structure of prime responsibility for Indian education, the internal organization of the agency or agencies responsible, the relationship of the agency or agencies to the Indians themselves, and the relationship of the agency or agencies to the Congress and to specific congressional committees. Recommendations concerning both the internal organization of the Bureau of Indian Affairs and the relationship of the Bureau to its Indian clients are made. The purpose of this document is to pull together most of the documents important to a close consideration of the organization question. (LS)

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91st Congress }
1st Session }

COMMITTEE PRINT

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THE EDUCATION OF AMERICAN INDIANS

THE ORGANIZATION QUESTION

PREPARED FOR THE

SUBCOMMITTEE ON INDIAN EDUCATION

OF THE

COMMITTEE ON LABOR AND
PUBLIC WELFARE
UNITED STATES SENATE

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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NOVEMBER 1969

VOLUME 4

Printed for the use of the Committee on Labor and
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FOREWORD

In its 2 years of work on the problems of educating American Indian children, the Subcommittee on Indian Education has repeatedly confronted the problem of organizing the Federal Government's activities in this field.

This committee print collects in one document the basic materials essential to a comprehensive understanding of the problem itself and to the formulation of a solution. For this reason, this print is an important element of the subcommittee's investigation, and will prove highly useful to those concerned with implementing the subcommittee's recommendations.

RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare.

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LETTER OF TRANSMITTAL

NOVEMBER 25, 1969.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
Washington, D.C.

DEAR MR. CHAIRMAN: In the investigation and evaluation of American Indian education carried on by the Special Subcommittee on Indian Education over the past 2 years, we have grown increasingly concerned over the "organization question." For we have come to believe that no matter how strong, how good, or how well-funded are the programs for educating American Indians, these programs will continue to founder without a modern, streamlined, and responsive administrative structure to carry them out.

This question of organizing the Federal Government's responsibilities for Indian education has four principal components:

The location in the Federal structure of prime responsibility for Indian education;

The internal organization of the agency or agencies with this responsibility;

The relationship of this agency or agencies to the "clients"—the Indians themselves; and

The relationship of the agency or agencies to the Congress and to specific congressional committees.

Certain aspects of this question lie outside the jurisdiction of this subcommittee, and for this reason we did not treat it as whole cloth. On the other hand, we did make a number of recommendations concerning both the internal organization of the Bureau of Indian Affairs, and the relationship of the Bureau to its Indian clients.

Our basic approach was to recommend that a White House Conference on American Indian Affairs treat this question in some detail. This is a particularly appropriate solution in light of our desire that the voice of the Indian people be directed to it before any final recommendations are made.

As a result, we have prepared this committee print which pulls together in one place most of the documents important to a close consideration of the organization question. It should prove highly useful in attempting to resolve this most troublesome issue.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Special Subcommittee on Indian Education.

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I. Overview [1]

THE BARRIERS TO CHANGE

The governmental practices and policies which work against the American Indian are long-established, deeply entrenched. In the Agriculture Department, the Public Health Service, Interior and elsewhere—but especially in the Bureau of Indian Affairs—they operate to alienate the Indian to perpetuate his dependency and to thwart his every attempt at self-realization. Often these practices run directly counter to official policy; they stymie presidential or congressional directives. Yet they endure, seemingly with a life of their own.

Good men go into the BIA, but years later their bright hopes for reform have dimmed, their sense of outrage and moral indignation has become deadened.

Why is this? What happens? Must this continue? These are the questions which must be explored. The Bureau says its hands are tied, that it lacks the legal authority to make the needed changes in policy and practice. The Bureau, however, has all the legislative authority it needs, perhaps considerably more than it should have. These administrative practices, policies and regulations which have assumed the authority of truth could be altered by the stroke of a pen.

No agency in the Federal Government has more leeway to do good or evil than the Bureau of Indian Affairs. Its

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[1] Excerpted from *Our Brother's Keeper: The Indian in White America*, edited by Edgar S. Cahn, Citizens' Advocate Center, 1969.

history is a story of paths not chosen. Witness this mandate:

> "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." (—from United States legal statutes.) [1]

The BIA could contract out virtually all of its functions to Indians today, and thereby eliminate many of the chores the Government now performs. Federal law clearly states:

> "Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their . . . mechanics teachers, farmers, or such persons engaged for them, the direction of such persons may be given to the proper authority of the tribe." [2]

> "The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State *or Territory,* or political *subdivision thereof,* or with any State university, college, or school, or *with any appropriate State or private corporation,* agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress of Indians in such State or Territory. . . ." (emphasis added)[3]

A tribal government can constitute a territory or political subdivision for purposes of this act and a group of Indians—or a tribe—could establish a private corporation under State law for purposes of entering into contracts.

Whether it would be wise for the Bureau to do so is another question, because the Bureau has failed to equip the Indian with adequate education, training, technical expertise or managerial experience. The contracting out device also could become simply a way of abdicating federal responsibilities. The only point being made here is that the Bureau has the power.

The Bureau has the power to make Bureau officials—including Area Directors and Superintendents—accountable *to the Indians they serve.* In one or two isolated instances the Bureau has permitted the tribe to interview candidates for Superintendent, but could do far more. It could require genuine participation by Indians in the decision-making processes which so deeply affect their lives.

The Bureau has the power to enable tribes to consolidate their landholdings, to develop assets and to assist in the development of land which has been fallow because of heirship litigation or checkerboarding. The BIA can invest trust funds for a substantial return and make trust funds available for investment in Indian projects, subject to appropriate safeguards. The Secretary of the Interior has "discovered" that he has the power to consolidate tribal land through the Bureau of Land Management.[4] That power could be delegated to the Commissioner of Indian Affairs. None of these reforms is being done, although some are quite simple. Consolidation of land may involve complex procedures, but urban renewal agencies deal with similar problems daily. The BIA has the power and could have the funds, if it moved flexibly in its treatment of Indian land and trust accounts as collateral for loans to purchase heirship land.

Under the Indian Reorganization Act of 1934 the BIA has not only the power, but also the obligation, to permit tribes to participate in the drawing up of their own budgets, establishing their own priorities. The tribe has the legal right to take the initiative, draw up its own budget and balance the available resources to best meet its needs—not just at the preliminary stage but at the point of final submission.

The BIA has the duty to see that every Indian is provided with a lawyer in both civil and criminal cases.

> "In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity."[5]

The Bureau has the power to reorganize and restructure itself to be responsive to the needs of today. These powers could extend, but are not so limited, to delegating greater authority at the reservation level, eliminating red tape, revising the laws which apply to Indians and renouncing termination as a Government policy. Without any new laws the BIA can do such things as initiate procedures to assure that Indian funds earmarked for public facilities (such as roads) are spent in ways that actually benefit the Indians; enforce preferential employment guarantees for Indians in Government contracts; train Indians to better manage their assets and affairs free of Government paternalism; protect the Indian from unfair state and local taxation and assure him his rightful share of state and local services. Equally important, the Bureau could allow the tribes greater latitude in designing their tribal governments and delegate more authority to those governments. Certainly the Bureau could cease practices which discriminate against Indians in favor of Bureau employees.

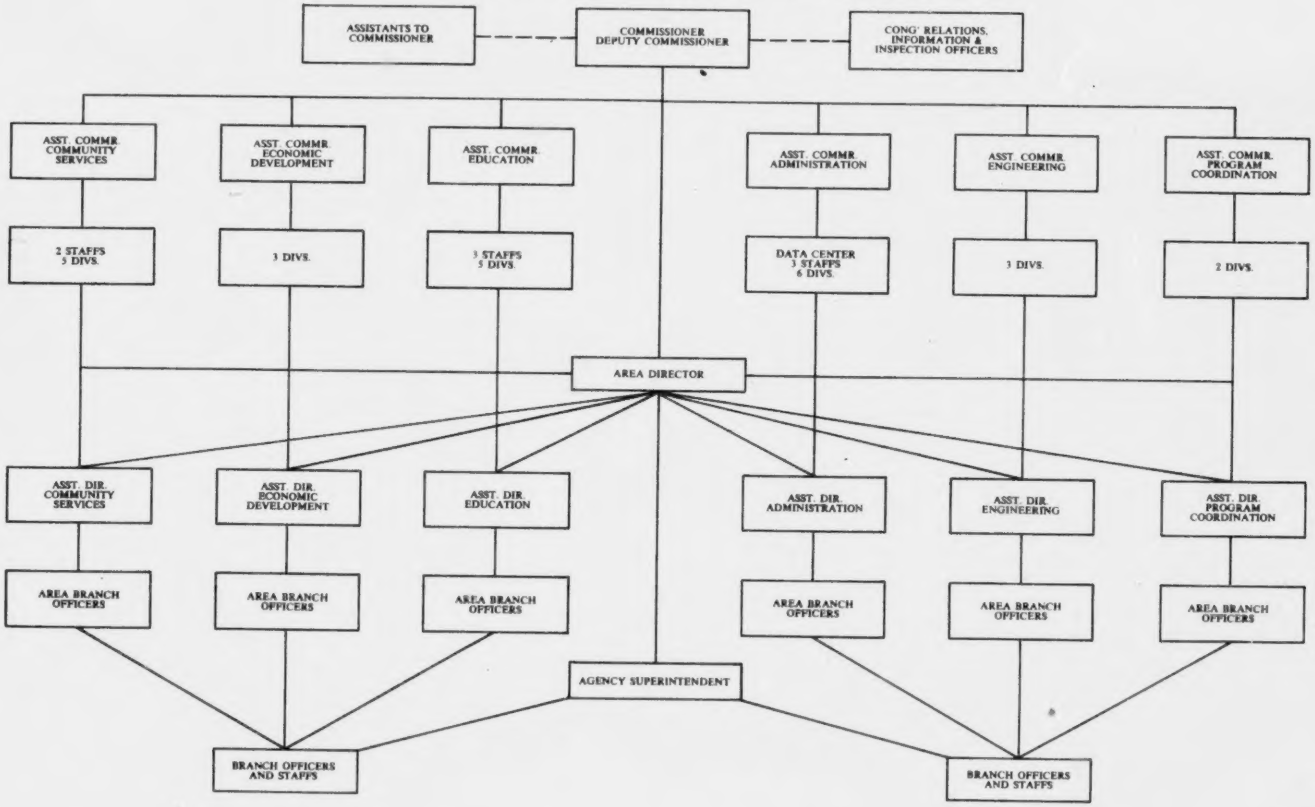
As Helen Mitchell, former recording secretary of the National Congress of American Indians, told BIA Commissioner Robert Bennett at a Regional meeting at Spokane, Washington:

> "I firmly believe that legislation is not necessary but in a very few items. The NCAI Executive Committee, and other leaders, sat around a table and took a cross section of Indian country. We found that what can't be done in the Portland Area is being done in [the] Aberdeen Area, and what can't be done in [the] Aberdeen Area is being done in Phoenix and so on down the line. I suggest, Mr. Commissioner, that the power is within your reach." [6]

The authority is there; at times, BIA officials have admitted it. Commissioner Bennett, in Albuquerque shortly before his term ended, said: "I believe as we look over the authority we already have, that Congress has already given us, we can make greater delegation of this authority . . . to the Superintendents so there can be quicker decision-making to enable Indian people to take advantage of the opportunities they now have." [7]

Bennett also declared that he expects no difficulties in securing cooperation from Congress. He said, "I hope we can work with the Congress to get these opportunities for you to make more decisions. . . . The atmosphere and the environment for Indian opportunity is much better than it has ever been. There is much good will in the Congress. . . ."

PRESENT STRUCTURE OF THE BUREAU OF INDIAN AFFAIRS


ASSISTANTS TO COMMISSIONER
COMMISSIONER DEPUTY COMMISSIONER
CONG' RELATIONS, INFORMATION & INSPECTION OFFICERS
ASST. COMMR. COMMUNITY SERVICES
ASST. COMMR. ECONOMIC DEVELOPMENT
ASST. COMMR. EDUCATION
ASST. COMMR. ADMINISTRATION
ASST. COMMR. ENGINEERING
ASST. COMMR. PROGRAM COORDINATION
2 STAFFS 5 DIVS.
3 DIVS.
3 STAFFS 5 DIVS.
DATA CENTER 3 STAFFS 6 DIVS.
3 DIVS.
2 DIVS.
AREA DIRECTOR
ASST. DIR. COMMUNITY SERVICES
ASST. DIR. ECONOMIC DEVELOPMENT
ASST. DIR. EDUCATION
ASST. DIR. ADMINISTRATION
ASST. DIR. ENGINEERING
ASST. DIR. PROGRAM COORDINATION
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AREA BRANCH OFFICERS
AGENCY SUPERINTENDENT
BRANCH OFFICERS AND STAFFS
BRANCH OFFICERS AND STAFFS

II. Historical Background

A. The Problem of Indian Administration (excerpts)

("The Meriam Report"—Report of a Survey Made at the Request of Hon. Hubert Work, Secretary of the Interior, and Submitted to Him, February 21, 1928)

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CHAPTER V

ORGANIZATION OF THE FEDERAL INDIAN WORK

Three fundamental recommendations must be made for strengthening the organization of the Indian Service. Briefly summarized, they are:

1. The creation, in connection with the Washington office, of a professional and scientific Division of Planning and Development.

2. A material strengthening of the school and reservation forces that are in direct contact with the Indians and are responsible for developing and improving their economic and social condition through education in the broadest sense of the word.

3. The maximum practical decentralization of authority so that to the fullest possible extent initiative and responsibility may be vested in the local officers in direct contact with the Indians.

Each of the recommendations requires elaboration and each will be taken up in turn.

A PROFESSIONAL AND SCIENTIFIC "DIVISION OF PLANNING AND DEVELOPMENT"

The functions of the recommended "Division of Planning and Development" may be outlined briefly as follows:

1. To advise the Commissioner in matters requiring technical or scientific knowledge of particular problems.

2. At the request of the Commissioner and subject to his approval to formulate programs and develop policies to be carried out by administrative officers or to assist in planning and arranging co-operative programs with state and local authorities.

3. To visit schools and agencies and to report to the Commissioner upon the effectiveness of the administration in those fields of work that are professional, technical, or scientific in character.

4. To visit schools and agencies and to advise and counsel with superintendents and other employees regarding the development and improvement of these specialized activities.

5. Upon direction of the Commissioner to investigate and hold hearings upon matters of special complaint that involve technical or scientific subjects.

No one who studies the Indian Service can fail to be impressed with the diversity of its activities. No other government agency exceeds it in the number and variety of the fields of human activity which it embraces. It must minister to all the needs of well over 200,000 Indians who are, without any possibility of legal quibble, still wards of the government, and it is deeply concerned with the entire Indian population numbering over 300,000.

In behalf of its wards the government must make provision for the promotion of health, education, economic development in agriculture, animal husbandry, forestry, and a great variety of other industries, advancement in social conditions including family life and community activities, and the maintenance of law and order. It must also conserve and often manage the property of its wards, in some instances a task of great financial responsibility.[1] These functions must be performed, not with respect to a concentrated homogeneous population embraced in a comparatively small area, but with respect to widely scattered groups often living in almost unbelievable isolation and varying all the way from extremely primitive to those who have reached approximately the same scale of development as the prevailing white civilization of their communities. The economic and social conditions with which the Service must deal are equally varied. Many different kinds of agriculture must be known to the Service—ordinary farming with a sufficient rainfall, dry farming, farming under irrigation in a climate which will give seven cuttings of alfalfa in a year, farming under irrigation where the season is so short that maturing a crop is a problem, livestock raising whose summer and winter feed are both available, and livestock raising where the problem of wintering stock is serious. The economic resources of the wards vary all the way from those of the Osages, submerged by a flood of unearned income,[2] to the many Indians submerged by extreme poverty occasioned by the utter lack of agricultural or industrial resources on their lands.

Add to the administrative problems the pressure coming from the encroachments of white civilization with both its good and its bad;

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[1] The activities of the Service are discussed in detail in Schmeckebier, The Office of Indian Affairs, pp. 143-269.

[2] For information on poverty of the Osages at one time, and present economic and social condition, see Schmeckebier, pp. 111-15.

missionaries of many different sects and denominations, some broad, tolerant, and coöperative, and others not; whites anxious to help and protect the Indians but with an extreme divergence of views as to how it is to be done; whites anxious to despoil the Indians of their property without conscience as to the means to be employed; persons holding public office with views regarding Indians and their rights as widely variant as are those entertained by the different classes of whites. Scramble all these things together with many more not specifically mentioned and one gets a very much simplified picture of the job of the Indian Service, and of the Commissioner of Indian Affairs.

No Commissioner of Indian Affairs, however able and efficient, can possibly be master of all the fields of knowledge which must be brought to bear in the administration of the Indian Service. To a lesser extent this same statement may be made with respect to superintendents of agencies and schools. The jobs are too varied and diversified, the number of fields involved too great. It is not surprising therefore, frequently to encounter in the field intelligent and observing Indians who attribute some of their failure to advance to the frequent changes in programs and policies resulting from a change in the office of superintendent. One superintendent advocates stock raising as the economic salvation of his Indians, and his Indians attempt to follow his leadership. His successor says stock raising is no good, that the Indians must raise corn, and again they attempt to take his advice. A third superintendent follows who says the Indians cannot get anywhere with corn, they must try sheep. It is small wonder the Indians become skeptical of their Moses.

Astute observers say that what has happened on some of the reservations because of changes in officials and policies is to a considerable extent true of the Indian Service as a whole, that it has had similar reversals of policy and program; and considerable evidence warrants such a conclusion. A previous administration rode hard the theory that the salvation of the Indian was to turn him loose from government supervision. Competency commissions went through the Indian country applying this theory wholesale, and many a poor Indian found himself a patent-in-fee Indian without the knowledge and ability to stand on his own feet, without government advice and assistance. The present administration wisely called a halt, and is proceeding on a far more cautious and conservative policy, with less regard for a radical theory and more for practical facts. Tribal herds had their vogue. They probably went up too fast and came down too hard. They undoubtedly have their place, for on some of the reservations stock raising is the main economic possibility. The fact is, however, that the Indian Service has lacked for its different jurisdictions a well considered, well rounded program, arrived at after a full and careful consideration of the various essential factors in the situation by persons competent through training and experience to evaluate these factors and develop such a program.

Without stopping to discuss the more or less academic question of whether this failure has resulted from a lack of funds, or from a lack of vision of the necessity for such work, or a combination of the two, it may be said unqualifiedly that the Indian Service lacks expert technical advisers in most branches of its work. The duty of studying, planning, and developing has fallen on general administrative officers, whose days are already filled with myriads of administrative duties, some major and some minor. Although in some instances these employees have considerable technical knowledge and experience in some one or more special fields covered by the Indian Service, they cannot possibly be experts in them all. As administrators they must be general men, not specialists, and the work of surveying conditions and working out programs calls for specialists who can coöperate and develop a program which good general administrative men can carry out.

The Commissioner of Indian Affairs needs the advice and assistance of such men in addition to that of his administrative assistants. In the matter of school curriculum, for example, he needs not only the advice and experience of those who have devoted their lives to the administration of Indian schools, but also of those who, free from the burden of administrative work, have had the training and the opportunity to specialize in the study of curricula in all kinds of schools and can bring to the Indian Service the wealth of experience gained in educational enterprises conducted under widely differing conditions. Both types are necessary; one without the other is like a single blade of a pair of shears.

Superintendents of agencies and of schools are equally in need of expert advice and assistance in the varied activities of their administration. Numerous instances can be cited of able efficient field administrators who would be quick to profit from suggestions for improvement in lines of activity which lie outside the range of their special training and experience. Again it must be emphasized that they are not being criticized because their training and experience do not embrace every line of activity they are called upon to supervise and administer. To get administrators who had such training and experience would be humanly impossible. They must have specialists to whom they can turn for aid. As an illustration of what may be done in this direction may be cited the progress made in the Indian schools in recent years in the teaching of home economics, an improvement brought about in no small measure by the employment of a specialist in this field to advise and work with the school administrators. What the superintendents need is far more assistance of this general character, so that in each important field they can secure expert technical aid.

These technically trained and experienced persons are also needed to investigate complaints from the field which are technical in their nature. As an instance, a group of Indians complain that they have been charged with heavy construction costs for the irrigation of their lands, a work undertaken by the government upon its own initiative, and that it is impossible for them so to use their lands that they can meet the construction charge and the operation and maintenance charge. They have the fear that the whole enterprise is a conspiracy ultimately to deprive them of their land and get it into the hands of white men. The hurried examination of this case by the present survey indicated that the Indians were probably right in their impression that under existing conditions in agriculture they could not make the land pay the charges; but it was extremely doubtful if any white people would take it over if they had to meet the same charges. The Secretary of the Interior has himself recognized the necessity for technical and scientific investigation in these fairly numerous irrigation cases and has appointed a well qualified fact finding committee to visit the various irrigation projects in the Indian Service. Similar investigations are needed in many fields and the Indian Service needs in its organization a definite provision for making them, hence the recommendation for a Division of Planning and Development.

This Division should as a general rule be kept free from regular routine administrative duties. The regular administrative duties should be left in the administrative units as at present. When called upon to do so by the Commissioner, members of the Division should study and report upon the work of the administrative units, but they should not issue orders to superintendents or attempt to assume any direct administrative authority. If orders are to be issued, they should come from the Commissioner so that there may be no confusion in lines of responsibility and authority. Heads of administrative units should, however, be free to seek the advice and suggestions of members of the Division when technical and scientific questions are involved.

Organization and Procedure. The Commissioner of Indian Affairs should be ex officio, the chairman or director of the Division. Routine matters of administration in the Division should be handled by an executive clerk or secretary. The members of the staff of the Division should each have a permanent or residual status of independence of other members of the Division and should report directly to the Commissioner for all assignments. Their temporary relations to each other should be established from time to time by assignments to projects made by the Commissioner. Thus an organization can be perfected for each project according to the needs of that project without undue embarrassment from previously established lines of authority and responsibility, and without undue commitment as to future lines.

To be more specific, an outstanding need for planning and development at the present moment relates to the Pima Reservation where the entire situation will be changed as the result of the building of the Coolidge Dam, and the irrigation of some 30,000 to 40,000 acres of land affecting about 4500 Indians. Here the Indian Service has a problem of the first magnitude calling for the best expert advice obtainable. It would be folly to entrust it to a single superintendent whose training and experience is that of a general administrator.

The Commissioner should be able to organize through his Division of Planning and Development a special committee to develop the entire program for the work. In this instance he might select as director of the particular project an agricultural economist or a broad gauged irrigation engineer. With them should be someone who knows thoroughly farm demonstration work, another who can tie the schools into the program, and a third who can visualize the relation of the women to the enterprise. Some legal questions will doubtless arise, relating to water rights or to the possibilities of re-allotting certain families whose present allotments may not be within the area to be irrigated or of cancelling allotments where the present allottee cannot possibly make beneficial use of the water. A lawyer may have to be assigned to give some aid in the project, and others may prove necessary. The Commissioner should be as free to organize the project as is necessary without being hampered by previously established lines of authority and without committing himself as to what he will do in another assignment.

In such a Division of Planning and Development it may happen that a member of the staff may have simultaneously two or more assignments. In one he may be a subordinate with a minor assignment, in another he may be the responsible directing head. His position in each assignment will depend on the nature and needs of the particular project.

Although the Commissioner of Indian Affairs should be the official head of the Division, it does not by any means follow that he personally must do the detailed work of planning and organizing each project. Again to resort to a specific illustration, it is generally recognized that the present uniform standardized course of study for Indian schools has outlived its usefulness. The whole subject must be gone into again from the bottom up. The Commissioner might well consult the chief administrative man in charge of schools and the strongest specialist in his Division of Planning and Development in the field of school curriculum and ask them to prepare for him a plan for the organization of this project of radical changes to make the course of study fit the needs of the particular Indians who are being provided with schools. After consultation with them and after administrative review of their recommendations, he would issue substantially their plan for the conduct of the project.

Positions in the Division. The positions in the Division should be of two types, temporary and permanent. Temporary positions should provide opportunity for the retention for projects of special importance of specialists from other organizations. In some instances the positions would be temporary because the Service does not have enough work in the particular field to justify the permanent retention of a specialist in it; in others, because the specialist needed is an outstanding man in the field and could only be secured temporarily for the single project. Some of these specialists would be drawn from other organizations in the national government, notably the Public Health Service, the Department of Agriculture, the Bureau of Education, the Federal Board of Vocational Education, the Children's Bureau, the Bureau of Labor Statistics, and the United States Employment Service. In many instances in developing an agricultural program for a reservation, it would be desirable to retain temporarily specialists from the local state experiment stations and the state agricultural colleges, not only because of their specialized knowledge of local agriculture but also because through them effective plans of coöperative work between the national and the state governments can be perfected, thus facilitating the ultimate passage of the Indians from their status of wards of the national government to that of full fledged citizens of the state. Often specialists from colleges or universities or from private foundations or organizations will be found desirable, especially when they are representatives of organizations such as the American Red Cross, the National Tuberculosis Association, the American Child Health Association, or others like them, which may be in a position to render substantial aid on a coöperative basis in the actual execution of the plans after they have been developed. At times it will be desirable to have on these projects staff representatives of private organizations, which are particularly devoted to Indian affairs, and of missionary organizations which are at work in the field and whose intelligent understanding of the plan and effective coöperation in its prosecution are greatly to be desired even though they may not be absolutely essential. This device of having them represented in the formative stage would bring to the Indian Service the advantage of their knowledge and experience, and would at the same time tend to minimize that friction, now fairly frequently encountered, which generally has its origin in misunderstandings.

For the major activities of the Service which are continuous, the effort should be made to retain permanently highly qualified specialists who will quickly acquire a detailed knowledge of the Indian

Service and bring that knowledge to such temporary specialists as may from time to time be retained, so that the division coördinates the specialized knowledge of the Indian Service with the best knowledge gained by other organizations doing related work. The permanent specialists, if well qualified for their positions, will know and be in contact with the workers in their field in other organizations and will know what they are doing, and thus can advise the Commissioner regarding whom to retain for special projects.

To attempt at this time to say precisely what permanent positions should be created would be unwise, because time has not been available for a thorough discussion of the subject with the various officers of the Service and others whose detailed knowledge should be brought to bear on it. A valuable purpose will, however, be served by discussing briefly the needs as they have been seen by the members of the staff of the present survey.

Health. Promotion of health and the relief of the sick are functions of such extreme importance that they always merit first consideration. Fortunately at present the Indian Service is probably better equipped for planning and developmental work in the field of health than in any other branch of its activities. The present administration has already taken a great step in advance in enlisting the whole-hearted coöperation of the Public Health Service. The chief medical officer of the Indian Service is a commissioned officer in the Public Health Service. He is well equipped for planning and developmental work. As is set forth at length in the special report relating to health, he should be supplied with a small staff of specialists to aid him in developing and perfecting the specialized medical services which must be rendered. The position of epidemiologist at present authorized should be filled. New positions should be created for specialists representing the fields of tuberculosis, trachoma, child hygiene, venereal disease, and hospital administration. Their duties should be primarily consultive rather than administrative, and much of their time should be available for work with the Division of Planning and Development. Other needs for medical specialists can doubtless be supplied from time to time by further details from the Public Health Service in such a way that the extensive and varied resources of that strong organization will be available for the Indian Service. As has previously been pointed out, this proposed project method of planning and development will furnish an effective means by which the aid of other organizations such as state boards of health, the American Public Health Association, the National Tuberculosis Association, the American Red Cross, the Commonwealth Fund, and the American Child Health Association can be brought in, not to do an independent unrelated thing, but to do a particular part of a carefully worked out program.

The field of public health nursing also might properly be considered under this heading of health but it seems better to take it up later under family and community life as it is so closely concerned with the education and development of women for home life.

Education. As will be repeated again and again throughout this report practically all activities of the Indian Service should be educational in the broad sense. All employees in the Division of Planning and Development will be primarily concerned with Indian education, whether they are specialists in health, in economic advancement, in family and community life, in legal affairs, or in the more formal education given in schools. Under the present heading of education, however, will be considered only those positions concerned more directly with schools.

In the vitally important field of the school program much planning and development is needed to meet changed conditions and to bring the Indian schools abreast of the schools in progressive white communities, to make them fit better into the general educational systems of the states in which they lie, and to bring about that greater diversity of educational practice and procedure called for by the great diversity in the advancement of the Indians in the different sections of the country and in the economic and social conditions which confront them. Fortunately in this field the national government already has in its service a considerable body of well qualified specialists in the different branches of educational activity which will be involved, notably, in the Bureau of Education and the Federal Board for Vocational Education. Much can therefore be achieved through coöperative effort. It would seem as if the wisest procedure would be at the outset to secure for the Division of Planning and Development one permanent specialist in education, selected because of his breadth of knowledge of the general field and his contacts with the educational activities of the country. He should be able to advise with the Commissioner and with the administrative officers in charge of schools in planning projects and serve as the liaison officer to secure from other organizations, national, state, and private, the specialists needed for particular projects. Experience may demonstrate that some of these specialists brought in for temporary assignments are rendering such valuable aid that they will be retained for very considerable periods. In this connection it should be pointed out that colleges, universities, and educational systems are recognizing in an increasing degree the desirability of releasing their specialists for special service in projects of public importance. They recognize that they themselves profit in the long run from such a practice whatever may be the immediate inconvenience. Thus the Indian Service will probably find that it can enlist for its work some of the very best men and women in the country, persons who will accept temporary appointments though they would not consider a permanent position.

Economic Development. Possibly the outstanding need of the Indian Service lies in the general field of economic development, because here the Service is, at present, at its weakest.

Abundant evidence indicates the extreme importance of agriculture. It is by far the dominant industry among the Indians. The economic resources of most of them are predominantly agricultural. Agriculture in practically all its forms means an outdoor life. The Indian by inheritance is, of course, an outdoor man; and even if this were not the fact, the data regarding his health would indicate the necessity of directing him toward outdoor work. It follows therefore that great attention should be given the subject of agricultural development.

Agricultural Economist. The first need of the Service with respect to agriculture is an agricultural economist, who with other members of the Division of Planning and Development and with the administrative officers, can make a real study of the agricultural possibilities of the several jurisdictions and formulate a more or less permanent educational agricultural program which will be fitted to the resources of each jurisdiction and will not be subject to change with changing superintendents.

Cattle and Sheep Specialists. Since much of the Indian land is fit only for grazing and since cattle raising and sheep raising are each specialties, there is need, at least for several years, for a well qualified man in each of these two subjects. Sheep raising appears to offer exceptional opportunities.

Agricultural Demonstrator. Great improvement is needed in instructing Indians in agriculture and especially in furnishing them leadership and encouragement. The permanent staff should therefore include one man thoroughly posted on agricultural demonstration work, with wide acquaintanceship among the agricultural extension workers of the country, especially of the Middle West and the Far West. In this instance personality is important, for this official should be able to stimulate the local forces in the field and, more important, the Indians themselves. Several superintendents have demonstrated the possibility of rousing in the Indians pride in accomplishment. The person selected for this position should have this power to a marked degree.

Although other agricultural specialists would be needed from time to time in the temporary positions already described, it is believed that with these four positions created and ably filled, reasonably rapid progress could be expected in the formulating of well considered plans and in getting them under way. Again attention should be called to the fact that the form of organization proposed would permit of utilizing the temporary services of specialists from the United States Department of Agriculture, from state departments, and from state agricultural colleges and experiment stations.

Vocational Guidance. Since not all Indians wish to be agriculturists and since not all reservations offer real opportunities for agricultural development, consideration must be given to getting Indians established in other industrial pursuits. Some movement to cities is already in evidence and more rather than less lies ahead. Intelligent planning and development in this field affords a real opportunity for constructive service, which will bear fruit in two ways. First, it will aid Indians in getting placed and adjusted, something which they very much need because of their lack of contact with urban industrial conditions, their lack of knowledge of these conditions and requirements, and their natural timidity when in direct contact with white competition. Second, the experience gained in these efforts will give real data for revising and developing the industrial training given in the Indian schools. It would hardly seem as if the Indian Service itself would have to develop an elaborate machinery for finding positions. For this branch of the work it should establish connections with existing agencies national, state, and local. It will, of course, require field employees on the reservations to make this work effective. The first need is for a thorough study and a well developed plan. The person selected should be well qualified for making contacts and preferably should have a fairly wide acquaintanceship with persons engaged in placement work.

Native Arts and Industries. The survey staff has been impressed by the possibilities of the development of native Indian art and its application as an enrichment to our industry. Already possibilities in this direction have been demonstrated by private organizations and activities. The whole subject is considered more at length elsewhere, both from the economic standpoint[3] and from the social and psychological.[4] It would seem that, encouraged and developed, it would not only add materially to the economic resources of the Indians, many of whom are in great need, but it would also furnish them the opportunity to make a distinctly Indian contribution to our civilization which would appeal to their very proper racial pride. The possibilities are such that the national government could well afford for several years to retain at least one competent person, who with assistance from temporary specialists could go into the matter thoroughly and determine its possibilities.

Family and Community Life. The second broad field in which much remains to be done is in planning and developing well rounded programs relating to family life, home conditions, and recreation. These subjects are closely interrelated with health, school, and economic efficiency. The conditions found by the survey and detailed recommendations with reference thereto are presented in detail in other sections of the report.[5] The purpose here is briefly

[3] Pages 531 to 533.

[4] Pages 645 to 651.

[5] See the chapter on Family and Community Life, especially pages 629 to 638, the chapter on Health, especially 259 to 274, and that on Education, especially, pages 348 to 351 and 399 to 402.

to point out the positions in these fields which should be provided for in the Division of Planning and Development.

Public Health Nursing. Under the present administration the Indian Service has recognized the need for well trained public health nurses to visit the Indian homes, both to care for the sick and to give instructions in matters relating to health. It already has on its central staff a public health nurse whose duties are to develop this highly important activity. The beneficial results of this work are already apparent, although the Service has been handicapped by lack of funds for its rapid extension. The Division of Planning and Development should include at least one specialist in this field, so that as rapidly as possible the needs of the several jurisdictions for this important service may be determined and presented to Congress for appropriations. The necessity for the rapid development of this Service is so great as to warrant the recommendation that at least one well equipped person be free to devote all her time to planning and development, relieved of all responsibilities for the routine of administration.

Home Demonstration Work. The Indian Service has long recognized in the field the need for what is known generally as home demonstration work, but the standards which it set for this activity, arrived at years ago when such activities were in their infancy, have been too low to be effective. It has recently made a noteworthy advance in connection with teaching domestic science and home making in the schools, through the employment for its central staff, of a person technically trained and experienced in domestic science and home making. It needs to apply the same principle in its work on the reservation. The first step in this direction should be securing for its Division of Planning and Development a person thoroughly trained and experienced in home demonstration work in rural communities, so that it may have the benefit of the great body of knowledge and experience that has been accumulated in this field.

Social Service. The Service apparently has never had the advantage of the great body of knowledge and experience which has been accumulated through what, for lack of a better term, is called social work and which concerns itself with aiding handicapped families or individuals in adjusting themselves to their environment. The leading colleges and universities now give courses covering these fields and several special schools of high rank have been established to train persons in the principles involved and their application. Persons with this excellent training and with wide and successful practical experience are available. One such person should be on the central staff of the Indian Service, so that it will have the benefit of this type of knowledge and be kept in contact with the organizations that are now rendering such service in white communities, both urban and rural. The need for work of this character in the Indian Service is striking, as will be apparent from reading the section of this report regarding family life.[6]

Law and Order. The Division of Planning and Development would be incomplete without one permanent man with excellent legal training. He should have in addition a broad social background, as many of the legal matters with which he will be concerned are distinctly social in their nature, marriage and divorce, the handling of petty offenders, juvenile and adult, the provision of legal aid for the poor and ignorant in cases which are petty from a national standpoint but vital to the individual Indian who is trying to get on his feet and finds himself victimized by his sharper neighbor. The questions of whether the Indians should be subject to state laws regarding marriage and divorce and crime, for example, cannot be answered by one uniform decision, applicable to the entire Indian country; they must be answered by detailed studies of particular jurisdictions with due regard to the social and economic conditions of the Indians and their geographical location or, in other words, their isolation. These subjects are of course discussed in detail in other sections of the report.[7] It is believed that they demonstrate clearly the need for a permanent position to be filled by a person competent to bring to their consideration specialized knowledge and wide experience and to establish contacts with organizations having special experience in these fields.

Classification of Positions, Salaries, Appropriations, etc. These recommendations for permanent positions in the Division of Planning and Development would call for eleven specialists in addition to the five needed as assistants to the medical director who might administratively be attached to his office. One permanent position should be created in each of the following fields; school education, agricultural economics, cattle raising, sheep raising, agricultural demonstration, vocational guidance and placement, development and application of native arts and industries, public health nursing, home demonstration, social work, and law in its social aspects. Again it should be emphasized that in the broad sense every one of these positions, whatever the specialty, would be primarily concerned with Indian education.

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[6] Pages 547 to 661.
[7] Pages 743 to 811.

These positions should be classified as of senior professional grade (Grade 5) of the Professional and Scientific Service, as established by the Classification Act of 1923. Their duties will require them to perform advisory and research work based upon the established principles of a profession or science, and requiring professional scientific or technical training equivalent to that represented by graduation from a college or university of recognized standing, and many years of practical, successful and progressive experience in the application of these principles. They will be required to serve as consulting specialists and independently to plan, organize, and conduct investigations in original research or developmental work in their special professional, scientific, or technical fields. They should be persons of established reputation and standing. Their salaries under the Classification Act should range from $5200 to $6000.

In some instances it may prove practicable to fill these positions by the transfer of persons already on the professional and scientific staffs of other government offices, but in general they should be filled by open competition nationally advertised. This advertising could well embody an announcement of plans for the developing and improving the service for the Indians. Well done it would not only attract an able group of competitors but also would greatly strengthen the standing of the Indian Service with the public.

The appropriation for this Division, exclusive of the specialists to aid the medical director, should be a lump sum to be available for salaries and travelling expenses, including by all means attendance at meetings at government expense. To allow for freedom in employing temporary specialists and an adequate allowance for travelling expenses and clerical assistance an appropriation of $250,000 is recommended.

STRENGTHENING THE SCHOOL AND AGENCY FORCES IN DIRECT CONTACT WITH THE INDIANS

The second fundamental step in improving the Indian Service should be to strengthen those forces that come in direct contact with the Indians.

Superintendents' Salaries Should be Increased. The Service is to be congratulated on the high average level it has been able to maintain in the positions of school and agency superintendents, despite the relatively low salaries paid for these positions. To no small extent this situation may be due to the fact that many of these men are now past middle age and have spent many years in the Service. Several of the outstanding ones entered during the nineties, when opportunities were few and when men of excellent general training and ability could be secured for relatively small salaries. In these later years of higher prices and high costs of living, they have stayed on, partly because of their devotion to their work and to the Indians, and partly because training and experience as superintendent of an Indian reservation or an Indian school have little market outside the government. The question of comparative salaries was forced upon the attention of the survey staff when on the way from a fairly large reservation with all its intricate problems of human relations a stop was made to visit a strip coal mine, and it was learned that the man who operated the electrical scoop shovel got more for his comparatively short day than did the superintendent of the Indian reservation who could know no hours.

The salaries of superintendents have been adjusted somewhat through the so-called reclassification of the field services of the government, but further increases are warranted. The effort should be to make effective the plan of having a fairly wide salary range for each superintendency, with the minimum in the neighborhood of the present salaries and with a maximum materially higher; as much as a third to a half higher would not be in the least unreasonable. Efficient and able superintendents with fine records and long service should be advanced to the maximum.

Transfers of Superintendents Should be Minimized. The range between the minimum salary and the maximum should be especially wide in the case of the smaller jurisdictions. To a certain extent it is perhaps necessary and inevitable that they be used as training schools for the superintendents, but such use is hard on the Indians. When a superintendent has established friendly relations with his Indians, has won their confidence, and is exerting real leadership, his success may be rewarded by his transfer to another jurisdiction where the salary is higher. His own emotions may be mixed; the natural satisfaction of having a higher salary offset by regret at having to leave a job just at a time when he believed that he had steam up and was ready for real progress. Time and time again in the course of the survey it was almost pathetic to talk with superintendents whose hearts were with the Indians they had left behind, and whose overwhelming desire was to know how things were going with them, and what the survey staff thought of conditions on that reservation. It was, moreover, pathetic to talk with the Indians and to hear from them the many expressions of admiration and regard for the superintendent who had gone. Perhaps a past superintendent always looks better than a present one, but often the Indians would give concrete evidence of the real positions of leadership that the past superintendent had achieved and which so far as could be observed the successor did not promise to reach.[a] Every effort should be exerted to hold transfers of superintendents to a minimum and to provide for rewarding successful work on a small reservation by higher salary on that reservation. Too great emphasis can hardly be laid on the necessity for a superintendent to know his Indians and have their confidence, and that is something which cannot be done in a day.

Retirement Ages Should be Reduced. The age of retirement, under the present retirement law, is seventy, an age altogether too high for the Indian field service, and especially for superintendents of reservations. Only the exceptional man in the sixties, especially the late sixties, is possessed of the physical vigor demanded for effective work in the real Indian country. Distances are great, roads often poor, sometimes passable only after strenuous physical labor in snow, rain, or mud, bridges are often doubtful and sometimes entirely absent, and the temperature ranges are extreme. Often a trip to a distant part of the jurisdiction requires the better part of a day, driving through a country so remote that the persons in the car are almost entirely dependent on their own resources in case of any trouble. Lunch must be carried or eaten out of cans at a trader's store along the road. When night comes the superintendent is fortunate if he can put up with one of his district employees in a warm house, where he can get a meal prepared by a good cook and have a good bed in a room with the chill off. He may be where he is thankful to have a bed at all and to have a stove and firewood.

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[a] In one striking case the home of a comparatively young Indian man was visited. A former superintendent had inspired him to real effort and he had been well on the road to success. As the Indian farmer who was our guide expressed it "He was sort of a pet of Mr. —. Mr. — would go out evenings whenever he could get a few of the boys together and he would sit round with them talking farming, and he had this boy going. The next man was more of an office man and he didn't get out much with the Indians. After Mr. — left this boy quit, and nobody has been able to get him to take any interest since."

Under conditions such as these, it is not surprising to find some of the superintendents of advanced age becoming office men, spending much of their time on paper work that more vigorous superintendents delegate to their chief clerks, making their Indians come long distances to them even regarding fairly petty matters, and depending almost entirely for the necessary information as to actual conditions upon the reports of their district employees, reports the reliability of which the more vigorous superintendents check by first hand observation. The district employees find themselves left pretty much to their own devices, with only such direction and inspiration as the superintendent can give them at the agency office. The Indians, quick to observe and often to criticize, do not miss the facts. Their feeling sometimes is bitter, especially if a considerable part of the cost of administering the reservation is paid from tribal funds, or if they have previously had a superintendent whose belief was that a superintendent's main job is to be out on the reservation with his Indians, stimulating them to economic effort and to the improvement of home conditions. The best superintendents do take this view, and although they require a great deal of their district employees and place responsibility on them, they really supervise and direct their work on the spot where they can see conditions with their own eyes, and talk with the Indians involved, not in a hurried interview in the office, dependent entirely upon words exchanged through an interpreter, but right on the Indian's own land or in his own shack with the family gathered about. One can often see more in such a visit than the district employee could possibly report, especially where it is very evident that the Indian and the district man are not getting along.

The purpose of stating this situation clearly is not to blame the men of advanced age for not doing things which physically they are unfit to do. An attempt to do them would in some cases be almost suicidal. The purpose is to show the reason for recommending that retirement in the Indian Service be made permissible at age sixty and compulsory at age sixty-five with permissive extensions in exceptional cases to seventy. The employee at sixty should have the privilege of saying "the time has come for me to quit, I am too old to do the work," and the government should have the privilege of retiring him upon its own initiative. The adoption of this provision would materially raise the average level of the superintendents in the Service.

Retirement Allowances Should be Revised. In this connection it should be pointed out that a mere change in the ages of retirement will not be very effective in inducing voluntary retirement unless the retirement allowances for the higher paid employees in the government service are made more nearly adequate, and have some relationship to the salary of the position occupied. The superintendent occupying a position paying $3000 with a comfortable house, lighted and heated, is going to hesitate a long time before he voluntarily applies for retirement on $1200 with no allowances. It is a whole lot easier to degenerate into a swivel-chair superintendent. The administration, too, will be slow to act especially if the superintendent has a long record of good service, and if the decline is gradual and not marked by any bad breaks.

Higher Qualifications for New Employees. Future appointments to superintendencies should be made with more consideration of the technical requirements of the positions on the particular reservations and the qualifications possessed by the available candidates. On certain reservations the economic possibilities are of an outstanding type, such as farming under natural rainfall, farming under irrigation, stock raising, or forestry. Other things being anywhere nearly equal, a person with good fundamental training and experience in these fields is likely to prove superior to someone whose chief qualifications for the work are his knowledge of the office and of an Indian agency and his familiarity with the rules and regulations of the Service. Personality and administrative ability must of course always be given major consideration, but it should be possible in a Service as large as that dealing with the Indians to find persons possessed of these qualities in addition to the highly desirable training and experience in the lines along which lie the principal opportunities for the economic advancement of the particular Indians. One of the reasons for the recommendations which are to follow for raising the requirements for farmers, foresters, industrial and other teachers, and other professional and scientific subordinate workers, and for the establishment of the scientific and professional Division of Planning and Development, already described, is that such provisions will give the Service a far larger body of well equipped persons from whom selection may be made for promotion to superintendents. Examination of the ages of the superintendents will disclose that in the course of the next ten years the Service will have to replace a very considerable number of its veteran superintendents; and it may be questioned whether the younger timber at present in sight is as good as the old, for in the past ten or fifteen years positions in the Indian Service have not been nearly as attractive as they were when the present older superintendents entered the Service. It must be stated clearly that many of the present younger superintendents are excellent men and that there is no intention of discrediting them as a class in any way; but the Service will probably have to make more replacements in the fairly near future than it has for a good many years, and it should be giving consideration to that fact because of the vitally important place that superintendents, both school and agency, occupy in work for the advancement of the Indians.

Raising Qualifications for Employees in Direct Contact with Indians. The entrance standards for all positions where the employee comes in direct contact with the Indians to aid and lead them in a technical field should be placed on a reasonably high professional basis. It must be constantly borne in mind that these persons are primarily teachers; that their duties are not to do for the Indians but to teach the Indians to do for themselves and to give them encouragement and leadership. In some of the more remote parts of the Indian country these employees furnish the chief contact which the Indians have with the government and with the white race. Some of the day schools, for example, are literally outposts of civilization, miles away from agency headquarters,[*] miles away from the nearest white neighbors. There is altogether too wide a variation between the best and the worst employees. A few were found surprisingly effective, but others unfortunately were pitifully weak and ineffective. All turns on the ability of the teacher and the housekeeper, usually a man and his wife, out by themselves, far beyond the possibility of any really effective supervision. High standards must be maintained for positions such as these. It is a waste of funds to have qualifications so low that persons can meet the requirements who could not satisfy those set up by many states for positions in an ordinary school where the work is done under direct supervision.

Agricultural Demonstration Agents. In the section on general economics,[**] are discussed at length the present qualifications and duties of the so-called farmers. With the salaries and the entrance qualifications as they have been the surprising fact is that there are actually some really good ones. One would really like to know why a former teacher, a graduate of a normal school, and a student of agriculture, with a wife and seven children to support, is content to work for a hundred dollars a month and his house in a fairly isolated station; how he maintains his contacts with and secures coöperation from the state experiment station and the county demonstration agents; how he has actually succeeded in stimulating his Indians to go into that combination of turkeys, Rhode Island Red chickens, and milk cows, with some crop-raising on the side; how he succeeds in coöperating effectively with the missionaries and the day school teacher; how in general he has done things in such a way that one leaves the jurisdiction with the feeling that here is a demonstration of what can be done. The explanation doubtless is that he is a born teacher, fairly well trained, with a passion for agricultural development and without much thought for the tangible rewards of effort. Suppose since the passage of the Dawes act, the farmers of the Indian Service as a class had been the equals of this man, what would have been the status of the Indian today? At the other extreme are the farmers who as agriculturists appeal, unwittingly, only to the Indian's sense of humor. One farmer frankly admitted that he could not teach the Indians anything; he did not even raise a garden for himself or keep a cow, he couldn't raise anything in this country; but the Indians were doing it and had been for years, despite the difficulties. That was the only way they had to live.

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[*] The distances between field headquarters and sub-units are given in the outline of organization of the Indian Service in Schmeckebier, pp. 334-92.

[**] Pages 540 to 541.

The qualifications for farmers should be raised to the level required for agricultural demonstration agents and the salaries correspondingly increased.

A word should be said here against using farmers and other employees who should be teachers and leaders as law enforcement officers. On one of the reservations visited by the survey staff, four men of the group were taken to visit homes by the farmer. The Indians called upon were so thoroughly frightened and ill at ease that practically nothing could be learned that could not be seen. Later in talking with the farmer it developed that his real joy in life was in being sent to catch an Indian wanted for some offense. He described his technique, which was in brief to surprise the Indians in their homes or camps just before daybreak. Although such work may be necessary, it should not be done by the person who is supposedly trying to teach them agriculture. In this particular instance the Indians are already farming, but according to the local county agricultural agent, they need instruction and aid in renovating their soil, now rapidly approaching depletion through constant planting of corn. He hoped himself to be able to do something for them, because he believed their condition would be serious in a few years if it were not done, as yields have already become low. The government farmer made no report of this condition, which is basic to the economic welfare of these Indians. As he had himself never gone beyond the first year of high school and had no scientific training in agriculture, it is extremely doubtful if he had the technical knowledge to determine the needs of that particular soil condition and to work out the rotation of crops and other treatment that are required if these Indian farmers are to be rewarded for their labor.

Workers Aiding Families. In other sections of this report are discussed in detail the needs for several different types of work with Indian families to improve their living conditions and their health and to aid them in making the adjustments required by the pressure of highly organized white civilization.[11] These types of service are public health instructive nursing; actual care of the sick; the constructive administration of poor relief; instruction in home making and management, including particularly diet and cooking, home sanitation, the intelligent use of the family income, and methods of supplementing that income through activities which will strengthen rather than weaken family life; aid in overcoming those conditions which are at present resulting in broken homes, irregular relations between the sexes, irregular or no school attendance, and delinquency; encouragement in the development of recreation and community activities using both the Indians' own native games, sports, and gatherings, and those of the whites which the Indians enjoy, as an indirect attack upon the use of alcohol and peyote and other drugs and as a means of gradually eliminating such features of Indian dances, games, and celebrations as are actually detrimental to health and economic well being.

In the discussion of the proposed Division of Planning and Development it has been recommended that the central office secure for the laying out of programs and for aiding and advising superintendents and other field workers, technically trained specialists in each of these broad branches, either as permanent or temporary employees, and that it secure the coöperation of national organizations devoted to them. To have in each local jurisdiction a separate trained professional worker for each function is of course utterly out of the question. Many of the jurisdictions are altogether too small to warrant it. Several are so small that reliance must be placed on one or two persons to perform all these varied functions with such aid and assistance as can be secured from the superintendent and other local employees, and from the specialists in the central office and the contacts made through them. Several of the jurisdictions are large enough to warrant three or more workers. Some, notably the Osages, are wealthy enough to have several if the Indians can be convinced that such workers will render them a service of inestimable value.

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[11] See pages 189 to 345, 547 to 661.

Exactly what positions should be provided in a given jurisdiction and how the different duties should be distributed between them should be worked out by the specialists in the Division of Planning and Development after a careful study of local conditions. Some jurisdictions with a large number of Indians have such magnificent distances and such poor roads, that the practical solution will doubtless be to divide the territory into districts with one general worker in each district, and possibly one or two with special ability in fields particularly important in that jurisdiction located at the agency headquarters and working out from there. In other larger jurisdictions where the Indians are easily reached, it will doubtless prove more satisfactory to have the work divided on a functional basis with trained workers in the several branches with headquarters at the central agency office. Nothing uniform and standardized can be recommended offhand for application in all jurisdictions, because the needs of the jurisdictions are so different and the physical conditions so diverse. Study and planning are necessary to arrive at a sound plan.

An illustration of the necessity for planning on the basis of local conditions may be worthwhile. The employment of a trained specialist in recreation and community activities for the nomad Navajo would at this time be almost ludicrous. With the Osages, on the other hand, the employment of such a worker, the very best that can be obtained, appears to be a fundamentally important first step in an effort to combat the bad social conditions which threaten to engulf the whole tribe. The Navajos have little leisure and they rarely get together; they are too busy attending to their sheep. The Osages have little but leisure; their problem is what to do with it. They love to get together, hence the Peyote Church and the feast incidental to it, and the elaborate buildings constructed at the expense of individual Indians for community gatherings. Here is a force that is going to find an outlet. The question is can it be turned into channels that will strengthen these people or is it inevitable that they be submerged by it? The program here, it would seem, must begin with recreation. If recreation succeeds, contacts will have been established through which they may be aided in other directions, which to some persons may seem more important.

The Establishment of District Centers Within Reservations. In those jurisdictions where distances and road conditions make administration from a central agency office difficult, the policy of dividing the territory into districts should be generally followed, and large authority and responsibility should be vested in the district officers. This policy is already successfully applied in several jurisdictions. Indians should not have to make long trips to the central office of the agency and thus be kept sitting or standing around in idleness waiting to see the superintendent regarding minor matters of routine. The policy of having certain days on which scores of Indians flock to have audiences with the superintendent and other officers at the central agency,[18] and then wait around in crowds until decisions have been reached and action taken, is demoralizing to the Indians and is open to some of the objections which are advanced against Indian ceremonies, notably, taking the Indians away from their homes and farms. Coming to the agency with the whole family to camp for a few days, even if to see the superintendent, means just as much of a break in routine as does any other camping trip.

The superintendent of such a large agency should keep himself free for general supervision and leadership and should not permit a large part of his time to be taken up with routine requests relating to small matters. Several of the superintendents have abundantly demonstrated the practicability of such an organization, and they are as a rule the ones that are making the most substantial progress with their Indians.

The local or district men and women, if properly trained and equipped, will be working on a carefully planned, well considered program with respect to each of the families within their jurisdictions. This plan should be worked out by them in consultation with the superintendent, and after he has approved it they should be free to go ahead with it, including all such routine as is incident to the program, subject of course to general supervision from the superintendent.

[18] This should not be construed as a recommendation against the establishment of definite days and hours when the superintendent or other officers may be found at the office by Indians who really want to see him, or have matters of major importance to transact, or whose cases have been referred to him by the district officers.

Insofar as practicable the local units or districts in an agency should be developed so that they can render well rounded service for the Indians of the district. They should become social centers to which the Indians will naturally come, and from which they may be effectively reached. The superintendents should, as a rule, work through these units and not directly with the individual Indian. The success of such a program will depend in no small measure on the capacity of the district or local people, notably the agricultural demonstration or other economic leader, the field public health nurse and home demonstration worker, the local teachers, and others who are stationed there.

The missionary boards or other officials of missionary projects who are responsible for the activities of their local representatives should exercise greater supervision over them, and should visit them more frequently. They should be especially prompt to make first hand investigations in the field upon receipt of complaints from their local people regarding the misconduct of government employees, and their failure to coöperate. The governing boards should bear in mind the old adage that it takes two to make a quarrel, and that the chances are perhaps even that the missionaries are themselves as much responsible for the situation as are the government employees. Such friction where it develops seriously handicaps both the government and the missionaries. Rarely are both sides broad enough and wise enough to keep their difficulties to themselves. It is much more human for one or the other and generally both, to talk to the Indians, who frequently take sides. If the missionaries are of one faith or sect and the officers are of another, and if the Indians are adherents of different denominations, it is possible, if action is not promptly taken, for most regrettable factionalism to arise. Constructive work may be laid aside for the sake of the fight. In isolated communities with few contacts with the outside, the difficulties may reach an intensity which seems almost psychopathic. The missionary boards should first calmly and dispassionately make sure of the rightness of their own representative, preferably by a first hand visit, and should not back him to the limit on his *ex parte* statements. They may discover that the difficulty had its origin in the fact that the missionary does not approve of the prevailing fashion in women's dress and thinks that the superintendent should prescribe the styles for the women employees of the government on the reservation, or that the missionary thinks dancing is sinful and takes vigorous exception to the superintendent's permitting the government employees to hold on Friday or Saturday nights, or holidays, what appear to the outsider as innocuous little community dances. On the other hand, the missionary may have a really substantial case which the organization responsible for the presence of the missionary should promptly bring to the attention of the Commissioner of Indian Affairs for correction in that jurisdiction. The national boards should recognize this great responsibility and should appreciate the natural reticence of the government officers in lodging complaints against missionaries, especially when the difficulty has its origin in the fact that the missionary is vigorously insisting on a literal and strict observance of a rule of church discipline toward which ministers in larger, more sophisticated communities, often take a more tolerant, more charitable attitude. In these local units of the Indian Service it is of the utmost importance that the missionaries and the government employees should work in the closest harmony, and that there should be united effort of all in the furtherance of a well considered plan—economic, social, and spiritual.

THE MAXIMUM POSSIBLE DECENTRALIZATION OF AUTHORITY

The Indian Service, until the recent establishment of district superintendencies, was highly centralized. Perhaps the most striking single illustration of this fact is the uniform course of study prescribed from Washington for all Indian schools, carried to the extreme of having all important examination papers sent out from Washington. Another is the great mass of uniform rules and regulations prescribing in great detail uniform practice and procedure. Yet what strikes the careful observer in visiting the Indian jurisdictions is not their uniformity, but their diversity, a diversity affecting practically every phase of activity.[a] One might say that the only common fact is that all deal with Indians but even so the

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[a] Even in such a special subject as forestry and forest protection uniformity does not exist. The forest problems radically differ, for example in Quinaielt, Klamath, and Menominee. A uniform plan of protection from fires may meet the needs on many reservations but may be found on careful detailed investigation to be unnecessary and a waste of funds in a broken country like Pine Ridge.

Indians are of many different tribes, of many linguistic stocks, and of many different native cultures. Some are predominantly full-bloods, some predominantly mixed-bloods. From the standpoint of practical administration affecting social and economic conditions the term "Indian" seems to be of importance chiefly from the standpoint of law.

The Need for Decentralization. Because of this diversity, it seems imperative to recommend that a distinctive program and policy be adopted for each jurisdiction, especially fitted to its needs. Certain broad principles and policies will be common to many if not all, yet their application in individual cases may differ materially. To make such a general procedure effective local superintendents must be left with wide authority within the scope of the approved program as they cannot well be controlled by minute uniform rules and regulations applicable to the entire Service.

A step apparently in the direction of decentralization has recently been taken in the division of the Indian country into nine districts, each in the charge of a district superintendent.[14] Several of these district superintendents are also superintendents of particular reservations or agencies. With respect to their broad districts, their duties are primarily inspectional and advisory, not administrative. They are not in the direct line between the reservation or school superintendent and the Washington office. They do not pass on all transactions between the superintendents and the office. The organization thus remains highly centralized.

The difficulties resulting from high centralization have been touched upon at different points in the present chapter, but a brief summary of them here may be helpful. The Indians are widely scattered, in isolated sections, many of them at a great distance from Washington. Because of the distances and the isolation, delays in securing administrative action in a highly centralized system are inevitable even if prompt action can be taken by the central office. The diversity of the conditions on the different reservations makes it extremely difficult, if not impossible, for the personnel in Washington, especially the subordinate personnel, to have an intimate detailed knowledge of local conditions. A tendency toward uniformity of treatment almost inevitably results.

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[14] For districts and superintendencies under them, see Schmeckebier, pp. 272-73, 347-92.

What has been found good for one is assumed to be good for all. Because certain features of certain Indian dances are found to be injurious to the health of the Indians and to interfere with their economic development, it is easy to take a general position against all Indian dances. Because favorable reports are received regarding the success of a certain practice in treating trachoma in a given area, it seems simple to issue a general circular suggesting its use to the entire service affected. Because so excellent a device as the five-year program is producing good results where economic possibilities exist, pressure may be brought to bear on superintendents to adopt it in places where grave doubt exists as to whether the economic resources are sufficient to warrant making a distinctive feature of it. Reports, letters, and other paper work are greatly increased. The local superintendent and his assistants have to make the effort to put into words and figures what sometimes must be actually seen to be appreciated. Sometimes the matters involved are really of first importance and the superintendent's time is well spent. At times they are of much less importance, and the superintendent must devote energies much needed in other directions to showing why something good on other reservations is not applicable on his own. These things tend to diminish his authority and his responsibility. He can often say truthfully, in matters requiring prompt action, that he cannot act without specific authority from Washington, or in matters which seem open to criticism that a certain course was taken in accordance with general instruction from Washington, and that he personally thinks it a mistake. Occasionally a superintendent will be encountered who has the reputation of being so desirous of playing absolutely safe that he puts almost everything up to the Washington office, despite the fact that a prompt exchange of letters takes ten days to two weeks. In exceptional cases a superintendent is painfully embarrassed, if not discredited either with the Indians or with his employees, because his recommendations are reversed without what he regards as consideration of all the facts, or because although sustained, the action comes so late as to be ineffective or harsh.

Two Possible Steps. Although no form of organization or procedure will entirely overcome such difficulties, yet it is believed that a determined effort should be made toward further decentralization. Two different possible courses have been given careful consideration by the survey staff, which may be briefly stated as follows:

1. To develop district offices under district superintendents, and to place these district offices in the administrative line between school and agency superintendents and the Washington office. This course is not recommended.

2. To increase the authority and responsibility of agency and school superintendents, and to control them not through minute rules and regulations but through the establishment of definite programs for their jurisdictions, and through periodical visits and reports from specialists in the several lines of activity involved. This course seems wise.

Objections to the District System. The field work of the survey tended to bring out the objections that lie against the establishment of district offices.

Although distances would thus be lessened, the factor of distances and the absence of district superintendents from their headquarters would still be important causes of delay.

Unless the districts were to be fairly small and hence numerous, they would have to embrace jurisdictions with widely different social and economic conditions, thus rendering the position of district superintendent an extremely difficult one to fill adequately because of the diversity of the requirements.

District offices would radically complicate the relationship between the Commissioner of Indian Affairs and the superintendents of large or difficult agencies or schools where big or serious problems are being attacked. The Commissioner would be under obligation to deal with these reservation or school superintendents through the district superintendents instead of directly, or else run the risk of undermining the whole district system.

Friction might easily develop between district superintendents and local superintendents leading to situations difficult of solution without transferring one or the other. The more resourceful, able, and vigorous the local superintendent the greater chance for conflict unless the district superintendent was either himself big and able or was content to let his local superintendents run their own affairs. In several instances the reservation superintendent would of necessity have to be more of an expert in certain lines than the district superintendent himself, as for example, at such reservations as Pima, Klamath, and Yakima.

The existence of such district superintendents in the direct administrative line would tend to decrease the authority and responsibility of reservation superintendents, thereby making the positions less attractive to men of real ability, whereas one of the main problems of the Service is to make them more attractive. These reservation superintendents, in direct contact with the Indians, have to be the real leaders.

Placing district superintendents in direct line over school and agency men would in all probability tend to hold down or depress the salaries for the local superintendent in direct contact with the Indians. The view is commonly taken in governmental work that the salary for the position higher in the line of administrative authority must have superior pay. Since the reservation superintendent is subordinate to the district superintendent, it will be agreed, he should not get as much salary; yet actually salaries for real leaders on large important reservations should be as high as, or even higher than, for district superintendents only indirectly in contact with the Indians.

If the districts should be made sufficiently small to have substantial unity of problems and reasonably ready communication, and if each district office should be staffed with the necessary clerks and specialists, a very considerable sum would have to be spent for an overhead district organization not in direct contact with the Indians. Unless the district offices should have some specialists the local superintendents would be supervised by another general man, like themselves, but higher in authority. The outstanding need is not closer general supervision of superintendents but more aid and advice from persons who can help in those fields in which the superintendents necessarily must be weak in training and experience. Additional appropriation according to this view should be spent in developing a strong staff of specialists to work from the Washington office to give to the whole Service the benefit of this professional aid and advice, and to strengthen the local staffs dealing directly with the Indians, thereby eventually diminishing the necessity for close supervision. Expenditures in these two directions would, it is believed, remedy the situation without a material increase in the overhead for purely general administration.

One further reason for the recommendation against really administrative district offices should be cited. Their establishment would involve radical changes in the organization and procedure of the Service and could not easily be made effective by a gradual transition. It would be a radical operation.

The changes here recommended would not require radical revision of present lines of authority and responsibility. The administrative lines would remain much as they are. The advancement would come through the gradual transition resulting from the advice and coöperation of the central technical staff and from the strengthening of local officers aiding the Indians in improving their social and economic condition.

Advantages of Increased Authority for Local Superintendents. The advantage of increasing the administrative authority of the local superintendents, with contact through inspections and reports from specialists in several branches, may be briefly summarized as follows:

1. It would result in prompt and effective administration, overcoming to the maximum possible extent the tremendous handicap of distance and isolation.

2. Through coöperation between the superintendent and his local force and the Commissioner of Indian Affairs and his Division of Planning and Development, it would permit of providing for each jurisdiction a service particularly adapted to local conditions, uncomplicated by a strong tendency toward uniformity, although, through the Division of Planning and Development, the Commissioner and the local superintendents would have the benefit of the experience of the entire Indian Service and of organizations doing similar work for other groups.

3. It would increase the responsibility of local superintendents, justifying the payment of higher salaries and the raising of the general level of requirements.

4. It would bring to the aid of the superintendent not the coöperation of another general man like himself, higher in the official hierarchy, but instead that of several different specialists in distinct lines and possessed of training and experience to make them successful.

5. It would provide for investigation of complaints by technically competent persons not in the administrative line and not directly involved in administration.

6. It would be more economical even with the necessary higher salaries than the establishment of a new set of fully equipped district offices.

7. It would be a simpler and more direct system from the standpoint of the Commissioner in dealing with important problems affecting individual jurisdictions.

8. Transition can be made smoothly from the present system through the establishment of the Division of Planning and Development, the strengthening of the local staff, and a revision of the rules and regulations, progressive and experimental.

A possible objection to this plan lies in the fact that by increasing the authority and responsibility of local superintendents, they would be rendered more directly subject to attack from disgruntled Indians, disgruntled whites, and politicians catering to powerful groups of local whites desirous of getting possession of Indian property or property rights, such, for instance, as water for irrigation. The local superintendent could not so easily shift the responsibility to the Washington office or to minute rules and regulations. This difficulty, however, seems by no means insurmountable.

Broad rules and regulations would still be in existence gradually supplanting the present detailed ones, and they would be drawn with this situation particularly in mind. The superintendent, too, could refer matters obviously ticklish to the Washington office for advice or instructions.

More important would be prompt investigation by the Washington office of matters of controversy. Much good would result from open public hearings of complaints against superintendents, with opportunity for both sides to be heard, especially the persons who are making complaints and finding fault, supervisory administrative officers both from the field and from Washington, and representatives of public spirited organizations interested in the advancement of the Indians. Although such open hearings take time and involve some formalities, they have a curative value that justifies the cost and effort. More or less secret inspections often leave the situation much as it was, because people who believe they have evidence have no recognized established way of presenting it.

It is not at all uncommon to encounter Indians and whites, too, who say in effect " The inspectors were here, but they did not see us, they talked with the superintendent and a few of his followers and left before we had any chance to tell them our side." Investigators of this type have earned for inspectors among the Sioux the expressive but not altogether desirable title of " The Big Cat." [18] Much good would result if the proceedings could be more judicial in character, and leave all concerned with the feeling that full and complete opportunity had been afforded them to have their evidence considered. Doubtless many a statement made with vigor and possibly with elaboration in a more or less private interview would be materially modified if the speaker were on the witness stand in a public hearing.

In this connection it should perhaps be said that prompt dismissal from the Service or retirement should follow a finding that the superintendent or other local officer has been negligent, incompetent, or arbitrary, or has failed to afford full and complete protection of the Indians' rights and interests. In a criminal case the accused is, of course, entitled to the benefit of all reasonable doubts, but to apply this rule to the right to hold an office such as that of superintendent of an Indian reservation is likely to defeat the very purposes which the government has in maintaining the position. The question is whether the superintendent has so far lost the confidence and respect of the Indians that he cannot render effective leadership. If the evidence shows absence of any moral delinquency or of any defect in character or personality, the fact that he has lost the confidence of the Indians and cannot get along with them should not necessarily result in his dismissal. Transfer to another jurisdiction might in certain cases be the appropriate remedy, but transfers should not be made if there has been moral delinquency or if the transfer has resulted from some real defect in character or personality.[19] A superintendent or any other local officer who has no faith in Indians and who cannot treat them with the respect and courtesy he would show a white man in ordinary business relations, has lost a fundamental qualification for his work. A superintendent who has perhaps unwittingly permitted himself to be actively drawn into the social and business life of those elements of the white community which are believed by the Indians to be preying upon them may not in all cases merit dismissal, but he has gone a long way toward destroying his usefulness in that jurisdiction if not to the Service as a whole. In business affairs, if not in social affairs, the superintendent should keep himself above suspicion. It might even be wise for the Service to have rules prohibiting its local employees and their families from participating in local business enterprises either as stock holders or directors.[a] The fact that the superintendent is a director in a bank may have nothing whatsoever to do with the fact that a claim of the bank gets priority to the claim of an Indian for a given property, but it is hard to make the Indians believe it. To the impartial observer it looks at least as if the superintendent has done something inconsistent with the requirements of his position.

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[18] Members of the survey staff did not particularly relish having this title used for them, especially when it was applied to the woman specialist on family life in the feminine form " The Big She Cat."

[19] For comments on practice regarding transfers, see Schmeckebier, pp. 72, 298.

The immediate steps recommended with respect to organization and procedure are therefore the establishment of the Division of Planning and Development, and the strengthening of the local forces in immediate contact with responsibility of local superintendents.

Recommended Revision of Rules and Regulations. In connection with this third recommendation, a specific recommendation should be made for an early revision of the rules and regulations. For this purpose it would seem desirable to have a committee and sub-committee patterned after those which have been so successfully developed under the Chief Coördinator of the Budget Bureau. This committee should contain representatives of the Indian Office at Washington, and of the Office of the Secretary of the Interior, outstandingly able representatives of the field forces, representatives of the Bureau of the Budget and of the Comptroller General, and possibly representatives of responsible and constructive private organizations interested in the advancement of the Indians.

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[a] The law and the regulations already prohibit employees from dealing in Indian land; and the Supreme Court of the United States had held that the titles secured through transactions in violation of this law are void, and that neither the statute of limitations nor tactics ran in favor of the purchasers. The general effect would be wholesome if proceedings should be instituted to restore to the Indians lands which were taken from them in some of those unfortunate cases where field officers have been guilty of violating this law and have been dismissed from the Service because of their offenses. These titles are very probably void even in the hands of innocent purchasers. All such cases should be cleared up at the earliest possible day, as, unsettled, they leave grave doubt as to the validity of many of the deeds in the jurisdiction affected. Innocent third persons may be the victims.

Emphasis must be placed on the desirability of representatives of the Bureau of the Budget and the General Accounting Office, because these two organizations have certain regulations and controlling powers over the Indian Service and the Department of the Interior. It is imperative that these powers be exercised with real knowledge and understanding of the conditions under which work in the Indian Service must be done. A ruling of an office familiar chiefly with conditions in other services may work a real hardship on conscientious field employees in the Indian Service, and may lead to evasion by others not so conscientious. These evasions may be more costly than the practice against which the rule is directed.

A specific instance is the ruling that an employee who leaves his post after 8 A. M. and returns before 6 P. M. is not in traveling status and therefore is not entitled to reimbursement for his expenses. Under this rule a superintendent or other employee, who ordinarily eats his noon meal at home with his family, cannot be reimbursed for his expenditures for a meal when his work takes him to a remote part of his reservation unless his absence exceeds the limits thus set up. Although he ordinarily eats with his family and does not pay commercial rates for his meals, he is obliged by his official duties to make this special expenditure from his own pocket, unless his absence exceeds the prescribed limits. Salaries in the Indian Service are so low that the aggregate of those petty expenditures constitutes a considerable item for an employee who may from time to time be required several times a week to spend the best part of the day away from headquarters. The means of evasion are obvious. Be absent more than the minimum limit, even if that involves two meals instead of one and possibly a night's lodging. The government which balks at the smaller item will pay the larger one without serious question. The rule puts a premium on a leisurely program, a penalty on a crowded or full day.

Purchasing. In the field of purchasing it is particularly necessary that the controlling bodies have a clear understanding of the special problems confronting the Indian Service. The fact is recognized that in several instances the rules and regulations promulgated by the Indian Service and the controlling agencies are made necessary by acts of Congress, some of them passed years ago when conditions were fundamentally different. The committee in studying purchasing should proceed on the assumption that Congress will be prepared to adopt such new legislation as is necessary to modernize the purchasing system, and it should draft such amendments and new legislation as it believes necessary. If the committee can present to Congress a well considered plan acceptable to the Indian Service, the Budget Bureau and the General Accounting Office, it seems entirely reasonable to assume that the approval of Congress for a more economical plan will be readily secured.

The present survey has not had time to make a detailed study of the purchasing system and the laws and regulations governing it, but it has repeatedly encountered evidence that the present system is defective. For example, at some boarding schools no dried fruit was available from the opening of school in September to late in the winter or early in the spring, and then the entire supply for the school year was received. At one school which is entirely dependent on irrigation for its farming and at which the main ditch from the river had not been kept in a reasonable condition of efficiency, the children were being fed mainly on meat, beans and potatoes, and poor bread. The poor quality of the bread the officers attributed to the ovens, surplus army or navy property. To difficulties incident to purchasing was attributed the failure to secure promptly a supply of vegetables necessary to balance the diet. Here the dairy herd had also run down so that the milk supply was extremely deficient. To lack of available appropriations was attributed the failure to secure dried or canned milk. All this was on a reservation where the tuberculosis rate is high and where the officers commented on the fact that, for some reason to them unknown, girls and boys who had previously seemed well suddenly declined rapidly from tuberculosis at adolescence.

On one reservation where stock raising is the dominant industry, the superintendent and the chief livestock man, both capable and energetic, asked the survey staff how to draw written specifications for the purchase of breeding bulls in such a way that the contract could safely be let to the lowest bidder. They did not want the scrub bulls from a registered herd unloaded on the government. The owner of these bulls was naturally willing to sell them at a lower price than would any of his competitors who had stock of the quality necessary to maintain and develop the herd. Here some device for a local purchasing committee of experience, judgment, and integrity must be substituted for open competitive bidding on the basis of written specifications, when the price is the standard governing acceptance.

Ways must be found to shorten the period between the advertising for bids and the actual letting of the contract, especially in the purchase of commodities with a fluctuating market price. The allegation was frequently made that local dealers in the vicinity would not compete because of the delays and uncertainties involved. Under such circumstances the chances are that those who do bid set a price high enough to insure themselves against loss from market changes. Here the remedy apparently lies in materially raising the limit under which the superintendent can act without first referring his recommendation to the Washington office, and without going through all the formalities incident to a major government contract for future delivery. Such a change would result not only in more prompt deliveries, something worth a good deal in itself, but also it is believed in more competitors and a better price.

Automobiles. The purchase of automobiles and automobile supplies should receive special attention. The tendency has been to purchase the car of the lowest initial cost, generally a touring car or a roadster of one of the cheapest makes. Not enough attention has been given to the type of service which will be required of the car and what its upkeep will be. Doctors, field nurses, matrons, and superintendents ought to go out in any kind of weather. They should have closed cars, equipped, where the temperature gets low, with heaters. The cars should be maintained in first-class condition. It is the exceptional person who will, left almost entirely to his own direction as these field persons must be, work himself to the limit in extreme weather in an open car with tattered curtains, bad tires, uncertain brakes, and a doubtful engine, especially where the country is mountainous. It is far simpler and more human to find some work in the hospital, the office, or the home that really demands attention in bad weather, despite the fact that in such weather the needs of the Indians out in their shacks are frequently the greatest.

Little economy is effected by securing tires and tubes in advance and keeping them in stock in the warehouse for long periods before they are used. It is not surprising that tires kept all summer in a galvanized iron building on the Arizona desert failed after a few thousand miles, nor that a considerable part of the time spent in the field with an exceptionably able superintendent should have gone in changing, patching, and pumping. It would be cheaper to require that each car have all tires in good condition and two spares and to give the superintendent authority to purchase new ones from the nearest dealer who has a sufficient business to keep a fresh stock and who will offer a reasonable discount from list prices. Resort might be had to the mail order houses.

Serious consideration should be given to an entire change of policy with respect to cars for individual employees. It is believed that the plan of having each employee who requires a car own and maintain his own, paying him a reasonably liberal mileage for its use on government business would be a real economy. This plan is used by some branches of the federal government, by some state and local governments, and by some private corporations. It would necessitate regular reports on the number of miles traveled and the purpose of the travel and some clerical work, but these reports would give the superintendent a good idea of the work done, and with his knowledge of the country he could check their substantial accuracy. At times the government would doubtless pay for some miles actually traveled on private business, but under the present system official cars are likewise sometimes used in that way. The great advantage would be that the employee would have an incentive to take care of his own car; that he could not attribute his own shortcomings to the type of condition of the cars furnished by the government; that it would help him to keep a car for his own and his family's personal use, thus relieving them somewhat from the isolation of their life and from the tempation to use the government car personally; and it would relieve the government from the great amount of detailed work involved in keeping records of cars and equipment, and passing upon requests for new ones, and the purchase of new ones and equipment, and checking up repair.

Many of the employees already have personal cars and several of the superintendents and other employees use them extensively for government business, although the government supplies only the gas and oil used on official business. The employees at present personally stand for the tire costs, the depreciation, and the interest. The survey staff had many illustrations of the increased efficiency that came from traveling in the personal car of the superintendent or some other employee. These cars were bought for the country where they were to be used and were in condition. Government cars unquestionably do not receive the care and attention which employees give their own cars. Lack of careful attention added to the use of certain makes in a country to which they are poorly adapted apparently results in relatively high operation and maintenance costs and low efficiency.

Form of Appropriations. The proposed committee on revision of the rules and regulations, containing representatives of the Bureau of the Budget and the General Accounting Office should likewise give attention to the form of appropriations[a] for the Indian Service and the other laws governing expenditures. Here again time has not permitted of a detailed study by the survey staff, but enough has been seen to suggest the possibility of material improvement through the use of more general and fewer specific appropriations in order to give opportunity for freer administrative action controlled by reports and accounts upon the Budget Bureau and the General Accounting Office.

In expenditures for boarding school maintenance, for example, the Indian Bureau and the Budget Bureau are now specifically controlled by an act of Congress which fixes $270 per pupil as the maximum for schools of 200 or over and $300 for schools under 200. The amount to be appropriated is determined more or less mechanically by multiplying the number of pupils in each school by the per capita agreed upon for the year and adding the products to get the total for the appropriation. The per capita must not exceed the legal limit. The results of such a mechanical method are at once evident to anyone who observes carefully a number of Indian boarding schools. An instance was recently cited of a boarding school with an irrigation system which had run down, a resultingly poor farm, and a poor dairy herd. Here the per capita was woefully inadequate and its inadequacy handicapped the efforts of the superintendent and the principal to bring the plant back to efficiency. A boarding school on a neighboring reservation in the same state had an excellent irrigation plant, a remarkable farm, and an outstanding dairyman. The children had an abundance of milk, plenty of butter, loads of fresh vegetables, good home grown meat, and almost a gallon of honey per pupil per year. Sales from the farm added to its income. It was a pleasure to see these Indian children eat, effectively refuting the argument that Indian children will not drink milk and eat butter and that you can't get them to like vegetables. Each of the two schools, however, had substantially the same per capita. Either Congress itself should give more consideration to the needs of each individual school or it should delegate this authority to the Indian Office subject to suitable accounting control.

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[a] The appropriation act for the fiscal year 1928 is given in full in Schmeckebier, pp. 488-506.

Conferences of Employees. This recommendation for a committee on rules, regulations, and procedure should be accompanied by one for the wider use and fuller development of local conferences for superintendents, other agency employees, supervisory officers from the Washington office, and members of the suggested Division of Planning and Development. The annual conference of the superintendents of the Navajo jurisdictions indicates the possibilities in this direction. It is beneficial for the superintendents and other employees to get together to discuss their problems and for the Washington officers to participate with them. Provisions should be made so that persons not in the Indian Service, specially qualified to discuss the problems the superintendents face, may attend these conferences, speak, and participate in the discussions. The superintendents and the other field employees should not be asked to keep their noses always to the grindstone; they need now and then to get and possibly to give a new vision of their work. Such labor in itself affords in a way a little rest and relaxation and is a legitimate government expense. On rare occasions a national convention of Indian workers might return many times its cost, especially if it were divided into sections for the discussion of concrete problems and if the missionary bodies and other interested organizations would coöperate fully, as there is every reason to believe they would.

Administration of Indian Education. The Indian problem is essentially one of education and social welfare, rather than of land, property, or business, and principles that have been found to be successful in educational administration on a large scale should be applied to it. Instead, therefore, of a mainly clerical and administrative centralization of educational authority at Washington, as at present, responsibility should be localized in the superintendent of the school or reservation. As suggested in the chapters on Organization and Personnel and also earlier in this chapter of the report, there should be in Washington a well-equipped technical

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[illegible] Knox, School activities and equipment (Houghton-Mifflin, 1927).

staff, of the sort both public education and business have found necessary in recent years, to furnish professional direction for the entire service. This staff should be small, but it should consist of qualified men and women of at least the rank of educational specialists in other government services, such as the Bureau of Education, the Department of Agriculture, and the Federal Board for Vocational Education. It would be the function of this technical group to advise as to educational policies, to map out programs for adult education, health education, and other activities, and to bring to superintendents and other employees in the field recent developments that will help them in their work. Under this plan it would also be necessary to fill vacancies in the superintendencies with qualified educational administrators.[18]

Indians and Other Government Agencies. If Indian administration is to be effective it will need to have closer relations than have ever existed before with other federal agencies in education and welfare. A number of federal bureaus and boards do work that is directly related to the needs of the Indian Service and their aid should be enlisted. In the same department with the Indian Office, to use the most striking example of need of coöperation, is the United States Bureau of Education, which already has qualified specialists in the types of work in which Indian Service needs are greatest, namely, health, rural education, industrial training, agricultural education, adult education, primary schooling, secondary education, and other fields. Under reclassification the Bureau of Education, unlike the Indian Office, was treated as a scientific and technical service, with the result that salaries for specialists in the Bureau of Education are from 50 to 75 per cent higher than for the non-technical positions carrying corresponding work in the Indian Office. It seems incredible that the Indian problem has never had applied to it to any appreciable extent the professional service that Congress has gradually been making more and more effective in the Bureau of Education. Many of the states have had educational surveys and numerous other types of service from the Bureau of Education; the Indian educational program seems never to have really profited by the fact that the Bureau of Education is in the same department. This professional staff already at work in the Interior Department should at least be called in to help any additional staff that may be created to direct the Indian educational program.

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[18] See pages 368 to 370 of this chapter, and pages 132 to 134 of the chapter on Organization.

Recently the Public Health Service has been enlisted in the health work of the Indian Office, a commendable instance of the right type of coöperation. Health education will be found, however, to be at least as fundamental a problem as hospitalization and medical service, and for this the work of the Public Health Service officers will need to be supplemented by specialists in health education. In the field of vocational education the Federal Board for Vocational Education has an experience behind it of the past ten years that needs to be applied to the Indian problem. Other federal agencies which should be asked to coöperate as directly as possible in the Indian program are the Department of Agriculture, with its long experience in adult agricultural education, home economics, boys' and girls' club work, and extension work, and the Department of Labor, with such activities as those of the Children's Bureau and the United States Employment Service, vitally necessary in a comprehensive program of Indian education.

Technical Staff Necessary for Coöperation. Certain organizations exist outside the government service with which coöperative arrangements might well be made. The kind of technical staff repeatedly described is essential, however, for any successful coöperative arrangement. With the best intentions in the world, administrative officers cannot alone make professional coöperation amount to anything; there must be in the Indian work technical experts of at least as high qualifications as the employees of the coöperating agency, whether this be another federal department, a state, or an outside association. If, as seems probable, it will become desirable for the national government more and more to enter into coöperative relations with the various states in the handling of school work, health and social welfare for Indians, a technical staff at the Washington office will be indispensable. States with which the national government is likely to find it practicable to work out coöperative arrangements will usually be those like California, for example, which already have professionally qualified men and women in these fields, and the federal staff will need to be at least as well qualified. Whatever the outcome may be with regard to the administration of Indian affairs, whether left, as at present, a separate bureau in the Interior Department, consolidated with the Bureau of Education, grouped with a possible colonial administration in the Interior Department, as has been suggested for the Philippines, transferred to some other existing department, or made part of the new Federal Department of Education and Relief proposed by President Coolidge in his annual message, the essential thing will be to bring to bear upon the Indian problem all of the available resources of the national government, the states, and outside organizations.

B. Report of the Committee on Indian Affairs to the Commission on Organization of the Executive Branch of the Government (excerpts)

(THE "HOOVER COMMISSION," OCTOBER 1948)

George A. Graham, *Chairman*, Charles J. Rhoades, John R. Nichols, Gilbert Darlington

LOCATION OF THE BUREAU

Although a relatively small organization, the Bureau of Indian Affairs has a very wide variety of activities. Since it was set up to deal with a then peculiar group of people in all phases of their life which might require governmental attention, its activities are similar not only to those of a number of other Federal agencies but they are also similar to activities of State and local governments. It is correct to say that services of the Bureau are similar to those of other agencies rather than to say that they "duplicate" them, for the services are not rendered to the same people. The similarity of activities is a natural result of the decision to organize the Bureau on a clientele basis, which was the only basis that could have been satisfactory throughout most of the history of Indian affairs.

As the assimilation of Indians progresses, and as they and their problems become less unique, the basis of organization can be reconsidered. A unified Bureau of Indian Affairs is still needed, however, for a number of reasons. The objectives of public policy in this field can only be reached through a positive program. If the program is to be pushed through to a successful conclusion, someone must be responsible for it and have authority to act. Scattering responsibility for constituent activities would jeopardize prospects for success of the total program. The effectiveness of several activities, moreover, depends upon their complete integration, in a balanced area-program for each major concentration of Indian people.

The administrative location of the Bureau is another question. There are three bases from which it could operate—its present base in Interior, the Department of Agriculture, and the Federal Security Agency. In considering the three possibilities certain characteristics of the Indian program should be noted. Briefly, they are:

(*a*) Strong emphasis on full utilization of natural resources.

(*b*) Strong emphasis on utilization of these resources by Indians.

(*c*) Equally strong emphasis on further training and relocation of one-third to one-half of the Indian population.

(*d*) The transitional status of Indian land: Although privately owned it has been treated very much like the public domain; it is now moving toward the normal status of individually or corporately owned and controlled private property.

(*e*) The probable future transfer of governmental activities which will have to be continued to State and local governments: carrying out the transfer program will involve close and increasing contacts with State and local governments.

(*f*) The great political and economic pressure which has always been put upon the administration of Indian affairs, both in Washington and in Indian country: the Bureau calls for administrative ability of a high order and for phenomenal integrity and discrimination in protecting the public interest and the interest of Indian people.

(*g*) Great regional differences: Alaska in particular presents some unique problems; one of them is to determine the character as well as the extent of native property rights.

There are advantages to locating the Bureau in each of the three agencies, and no overwhelming advantage in any one of them. Leaving the Bureau in Interior could involve the minimum amount of disturbance to its operations. With progressive reduction of the Bureau's administrative operations in prospect, and its eventual liquidation in sight, there is no point in making any unnecessary changes in its base of operations. Until the issue of native rights in Alaska is resolved, a transfer out of Interior would be awkward. At present the Secretary of the Interior can establish reservations from the public domain for the benefit of natives in Alaska. If the Bureau is transferred to another department, responsibility will be divided and the land issue becomes an interdepartmental, hence a Presidential, question. Activities of the Indian service in matters of irrigation, grazing, forests, wildlife, water power, and mineral resources will continue to be like those of other bureaus in Interior. These facts point toward a conservative policy of no change.

Location in the Department of Agriculture would also have advantages. That department's business is to aid and look after the interests of rural people engaged in various forms of agriculture. The Indians are certainly a rural people today and what are Indian reservations by and large but undeveloped or submarginal agricultural areas? The standard techniques for dealing with many of the problems—extension services, 4–H club work, credit, soil conservation, and scientific forest management—are common to both Agriculture and the Indian service. The fact that half at least of the Indian people are pointed toward complete assimilation into the rural population of the country means that for them the location in agriculture will be better in the future than it is today. The transition of Indian lands from pseudo-public domain to private property also points to the Department of Agriculture as a good place to locate the Indian Bureau.

The third possibility is the Federal Security Agency. The most difficult problem of all in Indian affairs is the training, relocation, and placement in steady employment of one-third to one-half of the Indian population. The process of helping Indians to improve their lot as farmers and ranchers involves merely the application of tested standard techniques; but shifting thousands of families from the "back woods" to growing centers of employment will require the pioneering of new methods and techniques. This phase of the program will have to be pushed with the greatest interest and vigor. It is centered in people and their development as are many of the activities of the FSA.

Success in the program will depend on effective work with State and local agencies, which is something that characterizes nearly all FSA programs.

If the supervision of State employment services is permanently located in FSA the responsibility of the Federal Security Administrator for both programs would tend to insure the necessary hearty cooperation in finding jobs for Indians. The education, health, and welfare activities of the Indian Bureau would find kindred interests and staff in the Office of Education, Public Health Service, and Social Security Administration of FSA. As these activities of the Indian service are reduced in scope, professional standards can be maintained and professional assistance secured from the related agencies of FSA. The eventual liquidation of educational, health, and welfare activities of the Indian service would be relatively simple in the Federal Security Agency. It is of note that the Agency is already active in Indian affairs through public assistance programs for the aged, blind, and dependent children. It has also brushed aside the "wardship" concept (as an excuse for leaving Indian problems exclusively to the Indian Bureau) and it is dealing with welfare problems on their merits regardless of the Indian ancestry of the needy persons.

An additional factor which the Commission on Organization of the Executive Branch of the Government may or may not consider to be relevant is legislative organization for handling issues of Indian affairs. As matters now stand, these issues are handled in both House and Senate by subcommittees that are normally representative of western interests some of which are hostile to or in conflict with Indian interests. It is possible that, if Indian issues were considered by committees which handle Federal Security Agency business, those committees would bring to the Indian issues a broader perspective.

A conlusive case cannot be made for locating the Bureau of Indian Affairs in any one of the three agencies, it is believed; and it is probable that each of the locations would be workable. All things considered, however, the weight of evidence suggests that the best location is the Federal Security Agency.

C. A Program for Indian Citizens (excerpts)

A Summary Report by the Commission on the Rights, Liberties, and Responsibilities of the American Indian, Established by the Fund for the Republic, Inc.

W. W. Keeler, executive vice president, Phillips Petroleum Co., Bartlesville, Okla., former principal chief, Cherokee Nation.
Karl N. Llewellyn, professor of jurisprudence, University of Chicago, Chicago, Ill.
A. M. Schlesinger, professor (emeritus), history, Harvard University, Cambridge, Mass.
Charles A. Sprague, editor and publisher, The Oregon Statesman, Salem, Oreg.
O. Meredith Wilson, chairman, president, University of Minnesota, Minneapolis, Minn.

EXECUTIVE DIRECTORS

S. A. Aberle, Ph. D., M.D., 1957–61, Albuquerque, N. Mex.
William A. Brophy, 1957, lawyer, Commissioner of Indian Affairs, 1945–48, Albuquerque, N. Mex.

INDIAN VALUES AND ATTITUDES

INTRODUCTION

The Indian himself should be the focus of all government policy affecting him. Money, land, education, and technical assistance are to be considered only as means to an end: on the one hand, that of restoring the Indian's pride of origin and faith in himself—a faith undermined by years of political and economic dependence on the Federal government; on the other, the arousing of a desire to share in the benefits of modern civilization. These are deeply human considerations. If neglected, they will defeat the best-intentioned of government plans.

To encourage pride in Indianness is not to turn back the clock. On the contrary, it is to recognize that the United States policy has hitherto failed to use this vital factor effectively as a force for assimilation and for enriching American culture. As a result, Indians who have already entered the dominant society have generally disdained their historic background, drawing away from it as though ashamed. Instead of serving as a bridge to enable others to move freely between the two worlds, they have too often interpreted their heritage imperfectly to the majority race and have proved useless in explaining their adopted culture to their own people. Only men who have a foot in each way of life and an appreciation of both can effectively lessen the gap which divides the two and thus cross-fertilize both.

No program imposed from above can serve as a substitute for one willed by Indians themselves. Nor is their mere consent to a plan to be taken as sufficient. Such "consent" may be wholly passive, representing a submission to the inevitable, or it may be obtained without their full understanding or before they are either able or willing to shoulder unfamiliar responsibilities. What is essential is to elicit their own initiative and intelligent cooperation.

While emphasis should as hitherto be put on fitting Indian youth for its new opportunities and responsibilities, we yet must not dismiss the old Indian culture as being necessarily a barrier to change. In their society and in their religion, Indians believe they have values worth preserving. These are sometimes stated in mystical terms and, if related to the Supreme Being, are sometimes kept secret. Nonetheless they exist. Two examples out of many involve their idea of unity and their reverence for Mother Earth.

Unity is evidenced by the individual's voluntarily working with the community of which he is a part. He gives his strength and help to perpetuate the traditional culture. Cohesion is also furthered in many tribes by a veneration for elders and reliance on their wisdom. Status as well as personal security is often gained by service. Conversely, the pattern of sinking self into the group tends to discourage competitiveness or a pride in the possession of material objects for their monetary value. This complex of attitudes is perhaps one of the reasons for the improvidence of many Indians. Since ideals, however, are not consistently achieved, exceptions to the norm are found in every group.

The spiritual attachment to nature, an essential aspect of many pre-Columbian cultures, has brought the Indian into an intimate accord with the elements. This appears strikingly evident in the Indian attitude toward land. Land is believed to be part of a benevolent mother and, like her, vital to life. Among Indian tribes it was generally considered to be not a merchantable product but one the user had the natural right to enjoy. These attitudes and the attachment to their ancient religion and customs still tend to persist.

These and related ideas, if given due weight as part of the Indian's heritage, will prevent the confusion brought about in both races by the assumption that assimilation may be achieved through Indians' adopting a few simple attitudes of their white neighbors. For example, it is often said that the Indian *needs to be thrifty, to acquire habits of diligence, and to learn the importance of punctuality.*

Yet in their own culture, where the goals were understood, Indians were economical, were hard-working, and possessed a keen appreciation of time. Thrift was shown in their utilization of every part of animals killed in the chase, as well as by their gathering and drying of berries and edible roots. Hunting or tilling the soil with wooden sticks to grow enough food for the family demanded a high order of perseverance. The element of time for the agriculturists was determined by the planting and harvesting seasons, and for the hunter by the habits of the animals he stalked down. In each case, time was a vital factor, though not in the white man's sense of hours and minutes marked on the clock.

In occupations which appeal to the established Indian ideals, such as those calling for facing danger, for careful craftsmanship, or for common effort, Indians have not only found satisfaction but have achieved national recognition. Teams of Iroquois are outstanding structural steelworkers on high bridges and skyscrapers; groups of Apache and Pueblo "Red-Hats," flown to fight fires in the western forests, have excelled at this perilous work; and the demand for Navajos in factories which require delicate precision work is well known.

Nor should it be overlooked that Indian values are not unique. "Honour thy father and thy mother" is a commandment found among many peoples. The importance of any set of values does not arise from their origin, existence, uniqueness, or validity. What is of paramount concern is that we recognize those of the Indian in making plans for the race.

The matter of government aid also requires a new look. Since 1933 the dominant society has been meeting its human needs in ways similar to those traditional to Indian tribes. "Sharing" was with them a means of helping the helpless. The United States has supplied comparable relief through Social Security, and aid to the old, the blind, and dependent, crippled children, and the unemployed as well as by free distribution of surplus commodities. In other respects also, it has been extending to the entire population the kind of help formerly given only to Indians. Such things as Federal financial assistance for public schools, scholarships, the construction of highways and hospitals, and medical aid to the elderly are now benefits available to or planned for all Americans. These services have come as a consequence of Acts of Congress. The Indians through the years have received theirs as the result of bargains set forth in treaties, agreements, statutes, and policies.

As the outlook of two civilizations converges and the services to the rest of the people, financed partially or largely by the United States, actually outstrip those once given only to Indians, the movement of Indians into the broader society will be facilitated. What the members of this underprivileged race need is more and better education, improved economic assistance, a better state of health, and a more carefully designed preparation for the responsibilities of the white man's way of life. Provided that they can avail themselves of the services enjoyed by the rest of us, and also that they find material opportunities appropriate to their abilities, Indians can only benefit from a merging of the two cultures.

RECOMMENDATIONS

An objective which should undergird all Indian policy is that the Indian individual, the Indian family, and the Indian community be motivated to participate in solving their own problems. The Indian must be given responsibility, must be afforded an opportunity he can utilize, and must develop faith in himself.

Indian-made plans should receive preferential treatment, and, when workable, should be adopted.

Government programs would be more effective if plans for education, health and economic development drew on those parts of the Indian heritage which are important not only to the Indians but also to the cultural enrichment of modern America.

TERMINATION

INTRODUCTION

House Concurrent Resolution 108,[*] adopted in 1953, sent the word "termination" spreading like a prairie fire or a pestilence through the Indian country. It stirred conflicting reactions. To some it meant the severing of ties already loose and ineffective. Others welcomed it as a promise of early sharing in the tribal patrimony. Many outsiders realized that it provided a first step towards acquiring Indian resources. In the great majority of Indians, however, it aroused deep fears for the future. The action of Congress, accompanied by the phrase "as rapidly as possible," sounded to them like the stroke of doom.

Resolution 108 was cast in terms granting Indians their rights and prerogatives as American citizens. Its stated purpose was to free them from Federal control and supervision, end their wardship, and make them subject to the same laws and entitled to the same privileges as other citizens.

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[*] HOUSE CONCURRENT RESOLUTION 108, 83D CONGRESS, 1ST SESSION

AUGUST 1, 1953.

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purpose of this resolution.

Indians, however, were, in fact, already citizens by Federal law; they had all the rights possessed by their white neighbors. The term "wards" applied to them was, and had for a long time been, misleading. Except for the Federal prohibitions against selling alcoholic liquor to Indians, repealed in 1953, they were subject to no greater Federal control or oversight of their persons than any other citizens; they paid State and Federal taxes the same as non-Indians, unless specifically exempted by treaty agreement or statute. Most of the exemptions applied only to real estate or income from trust property. The property the government held in trust for them was supervised as in any other trust, although some claimed that the government's management was not effective. The restrictions and the trusts, however, had not been imposed by the government but, by and large, had resulted from covenants made by the Indians with the United States in the form of treaties, agreements, statutes, and policies designed to protect them from losing their land and to assure the right of self-government, the inalienability and immunity from taxes of their land, and the services which the United States provided.

"Termination" is not a new goal; but the word itself has remained a loose one without definite meaning. It may signify any one or all of the following:

> A relaxation of unnecessary Federal supervision over the government and business of Indian tribes and less control over the leasing and use of trust allotments of individuals.
>
> The rapid destruction of a tribal government that has operated for generations, thereby uprooting complex Federal, tribal and State relationships which are defined in hundreds of treaties, statutes, and court decisions.
>
> The forced sale of a substantial part of the tribal land and the dissolution of the trust on all allotments of members of terminated tribes.
>
> The subjecting of all tribal and trust-allotted land to State taxation regardless of the ability of the Indians to pay.

The applying of general State criminal and civil laws to Indians in place of Federal and tribal laws suited to their special needs.

The abandonment by the United States of education, medical and hospital treatment, road building, and other functions, and of technical and administrative services and guidance to Indians in the management of their own affairs, without giving any assurance that the necessary services will be available from other sources as they are to other citizens.

A violation of the expressed or implied obligations of treaties and agreements between the United States and a tribe for exemption from taxation, self-government, and performance of Federal services without these changes having had the unqualified consent of the tribe.

The termination laws enacted since 1954 produced or were capable of effecting all of these consequences.

Basically, the government had undertaken obligations and ensured benefits affecting all the tribes under the treaty and commerce clauses of the Federal Constitution. The complex tribal relations with the United States, with the States in which the reservations lay as well as with adjacent communities and other tribes were, all of them, dependent upon the permanency of what the United States had guaranteed. Even legal specialists can have no full comprehension of the tangle of readjustments involved in the concept "termination." Neither they nor the tribes can foresee what measures will be required to make sure that obligations now resting on the United States will somehow be fulfilled. What Indians fear therefore is a transitional period (not the first they have experienced) in which treaties will be breached and solemn agreements ignored, their land, tribal and allotted, lost, and necessary public services furnished by the United States withdrawn, without being replaced by others from the States.

Repeatedly in the past, Congressional action in such matters has cost the United States large sums in the later settling of claims or in defending lawsuits. Error or oversight in a termination today may tomorrow call for the payment of unanticipated indemnities.

The Indian whose interest does not coincide with termination, whether or not he senses the difficulties, would usually not willingly substitute for government by his tribe a control by an individual State, one which would subject him and his community to unfamiliar civil and criminal laws frequently enforced in tribunals where impartial justice has not been given because of discrimination, lack of understanding or sympathy. He could not be sure that the State would recognize the existing obligations of the United States or provide equal services. And, in any case, State legislators could not be expected to fit their legal system to the customs and hopes of Indians, who form a minority of the citizenry.

Since Resolution 108 was adopted by Congress, eleven basic termination laws have been passed to implement it. While the six termination laws enacted in 1954 emphasized their purpose of ending Federal supervision over Indian property and terminating the services furnished Indians by the United States because they are Indians, they, in fact, abolished the home-rule governments of the Klamath, Menominee, Paiute and other tribes, forced the sale of large amounts of land, including forest areas, of the Klamath Tribe, and made both tribal and allotted trust land taxable by the States.

Since 1950 the major controversy in Indian affairs has been whether the United States should follow a program of pressing for prompt termination of tribes without the consent of their members. This appeared to be the goal until September, 1958, when Secretary of the Interior Fred A. Seaton, in a radio broadcast in Flagstaff, Arizona, stated that none would be terminated without the consent of its members.

From the date of Seaton's speech until 1961, confusion has existed, the Secretary seeming to espouse one policy and the Bureau of Indian Affairs another. All the time, moreover, Joint Resolution 108, stating the policy of Congress, has been in effect.

Termination aroused protests from Indians, State legislators, and interested citizens. The number and vigor of the outcries and the difficulties encountered in trying to put the enactments into effect somewhat cooled the ardor of the terminationists. Though the full consequences of these measures cannot yet be estimated, it became evident that termination instead of being a simple process entails countless problems. The upheaval among the Indians would be not unlike that caused by superimposing the laws of New York on New Mexico with its different needs, people, cultural and legal heritage.

What alarmed the tribesmen also threatened many whites with financial losses. Notable examples are the stories of the Menominee forest in Wisconsin and the Klamath forest in southern Oregon.

The Menominee Act jeopardized the continued existence of the tribal forest, one of the last unspoiled timber areas in the northern Midwest. Wisconsin, recognizing the importance of keeping this resource intact so that it could yield perpetually, took measures to acquire it for the State in the event of a sale.

The Klamath Forest, containing approximately 590,000 acres of tribally owned commercial timberland, the finest stand of Ponderosa pine in the West, is located in southern Oregon. Under the management of the Indian Service, the annual cut was limited, looking to sustaining the yield of the Forest permanently. The Forest on the Klamath Indian Reservation supplies raw material to the principal industries of the Klamath Basin.

When the program prescribed under the original termination act was studied, it was realized that carrying it out would not only be disastrous to the interests of the Indians, but gravely injurious to the economy of the whole region.

The Management Specialists appointed by the Federal Government estimated, in 1956, that the Act would require the sale of almost three billion feet of saw timber in a period of one year, within an economic area in which the sawmill production was 350 million feet a year.

To throw so large a volume on the market all at once would have resulted in a forced disposal. Bidding would have had to be on a wholesale basis, at figures far below those being realized on current sales of small lots of timber. The buyers would be tempted to hurry the cut of their timber and market it as rapidly as possible to recoup their investment and save on interest and taxes. The resulting flooding of the lumber market would depress prices for other producers and lower the revenues to the government from the sale of timber on its nearby national forest lands by approximately fifty million dollars. When this large acreage was denuded of its growth, lumber mills would be short of logs, the community would suffer from loss of employment and the profits of forest products. The buyers, under very limited State reforestation restrictions, could abandon the cutover lands, exposing them to damaging erosion and impairing the watershed. Realization of these factors aroused community and industry leaders, conservationists, and the Indians themselves to demand amendments to the law which would protect the financial interest of the Indians and safeguard the economic well-being of the area.

The Act had to be changed in a number of ways. One amendment required the tribal timber to be divided into units and offered for sale only to buyers who would agree (on penalty of forfeiting the purchase) to manage the forest according to sustained-yield procedures so as to furnish a continuing supply of timber and conserve water, soil, and trees.

On those conditions only one of the eleven units offered has been obtained by a private buyer. The other ten units, under the altered law, will be acquired by the United States on April 1, 1961, at a cost of nearly $69 million. This same amendment provided that the United States also had to take over the Klamath Marsh in order to preserve it as a vital part of the migratory-bird flyway and a source of the Williamson River. The cost of the Marsh was $476,000.

The consequences of the Klamath Termination Act (P. L. 587, 83d Congress) had obviously not been adequately weighed either by the Department of the Interior or by Congress; hence four successive changes in the basic measure proved necessary.

The law and its amendments, taken together, furnish an example (not the only one in Indian history) of ill-considered and unsuccessful attempts to deal (in an all-inclusive measure) with Indians irrespective of their special way of life, their location, and property holdings. It also demonstrates that no termination of tribes, especially those with large properties, should ever be deemed merely an Indian problem. It is inevitably a national problem, one upon the solution of which depends the welfare of people both near and far.

In still another sense termination offers no pat answer to "the Indian problem," for the Indians themselves remain. They remain mostly where they were and as they were. For the government to act out of a sense of frustration and of haste to rid itself of the vexing questions involved in administering Indian affairs is bound to ensure failure. American policy, if it is to succeed, must aim at helping Indians to prepare themselves in advance of termination for self-reliant living in whatever is their prevailing social and economic framework. As this is accomplished tribe by tribe, termination will follow and follow from the Indians' own desire. Termination so conceived will be an act of statesmanship in the best American tradition.

RECOMMENDATIONS

AVOIDANCE OF UNDUE HASTE

Termination of the long-established relations between the Federal Government and the Indians should occur only after there is adequate information before the Federal Government, the Indians, the local people and their governments as to what will happen to all four parties at interest if the tribe is terminated. This requires the solution of legal, governmental, financial, and human problems. Adequate time must be allowed for the Indians, their neighbors, State and local units, and all others who might be affected by the change to work out the necessary adjustments.

Indians should be allowed full hearings before the appropriate congressional committees.

The Government's responsibility should be relinquished only when the Indians are no longer in the lower segment of our culture in education, health, and economic status. The tribesmen must also be qualified and willing to take on the additional responsibilities and be ready to take advantage of the wider social, economic, and political benefits on a comparable basis with their neighbors and without discrimination.

COLLABORATION OF INDIANS

In order that Indians may be able to make their own decisions, cooperate in the execution of a plan, and take responsibility for the results, they should participate fully at every turn. The participation should consist in working out the procedure from its earliest stages and continuing with the discussions during the maturing of the program, as well as in voting for or against the final formulation. Effective Indian collaboration in the development of a plan of termination should be a prerequisite to acceptance by the Congress. The process should involve not only leaders but the tribesmen as well. Testing should determine to what extent the people affected actually know what is being planned or presented. The freedom of Indians to accept or reject a program should not be tied to offers of payment from Federally held tribal funds, or, in the case of favorable action, to offers of later payment. A tribe should not be terminated without its freely given consent.

Ordinarily, any per-capita or other payments should be distributed in small sums over a period of time so that there is an opportunity for the recipients to learn how to handle cash before all assets are dissipated.

A termination plan should safeguard the interests of individual members whether they wish to remain as a tribal core or to withdraw when the majority rejects termination.

ECONOMICS—RESOURCES

Final decisions affecting termination should be preceded by plans acceptable to the tribe for managing, utilizing or dividing tribal properties. To this end, Indians should have competent and skilled assistance, paid for when necessary by the United States. The desirability and probable consequences of each plan should be discussed in advance and thoroughly understood by the Indians, the other people of the area, and the State and local officials.

Firm assurances that the plans can be carried out under State law should be obtained. If State law must be amended to permit the execution of an economic plan, the amendments should be secured before termination.

The termination measure should authorize the Indians to form a business corporation under a general Federal law, so as to provide a model for all tribes instead of a particular model in the case of each State; and it should further give express jurisdiction to the Federal courts in lawsuits brought by or against the corporation.

Where termination involves the disposition of natural resources and their subsequent use, Congress should give consideration to all its consequences such as the conservation of land and wildlife, watershed protection, the economy of Indian and surrounding communities, and all other matters relevant to the national interest.

WATER RIGHTS

There should be no termination of Federal responsibility for Indian water rights until tribal rights and those for allotted lands are either adjudicated or agreed upon as to quantity and priority among the Indians, the United States, the State and other users. This should apply to water already being put to beneficial use as well as to rights for future development.

The legislation should expressly recognize that the Indian rights do not derive from the State but exist independently of State law. Legislation should ensure the Federal courts exclusive jurisdiction over any lawsuit arising, as long as the land remains in Indian ownership.

TAXES

If extinguishment of the trust should subject the land to local taxation, then, before termination, it should be ascertained whether it is economically feasible for the Indians to pay the taxes required by local laws. If there is doubt about this, the land should continue to be tax-exempt until Congress provides otherwise. Equitable arrangements should be made for payments by the United States and by the Indians, to the extent of their capacity, until it is determined that the land, properly used, can support taxation.

TREATIES

Termination legislation should in no case conflict with any existing treaty or agreement with a tribe, unless it expressly waives, in writing, the matters in dispute.

SERVICES AFTER TERMINATION

Before the United States surrenders its responsibilities, studies should ascertain the ability and willingness of State and local governments to furnish services to Indians equal to those hitherto given from Washington. The relationships between the State and local governments, on the one hand, and the United States and the Indians, on the other, should be set out clearly. The State and local governments should as a minimum provide for the financing of those commitments to Indians which the Federal Government has theretofore met. If this cannot be done, the Federal Government should continue such financing or call off the termination.

Any termination act should provide enforceable standards for the quantity and quality of education, health, and other public services to be furnished by the State and local governments. The standards should bar any discrimination in rendering services.

* * * * * * *

EDUCATION

INTRODUCTION

The object of Indian education should be to aid the Indian in becoming a responsible citizen adjusted to his surroundings and a full participant in the benefits of American life without the necessity of rejecting his ancestral heritage.

In 1960 there were 119,829 Indian children between the ages of 6 and 18 in school (excluding Alaska) and about 7,989 not enrolled. The number attending State schools was 77,262 (64 per cent); Federal schools, 32,179 (27 per cent); and mission schools, 10,388 (9 per cent). There has been remarkable progress in the last two decades in the number of pupils as well as in buildings and educational standards. However, many schoolhouses today are either dilapidated or lacking in modern facilities, so that much of the teacher's time is absorbed in stoking fires or similar chores.

The Indian pupils come from environments ranging from the vastness of the Navajo desert to the grazing lands of the Sioux in the Dakotas to the swamps of Florida and the resort land of Palm Springs, California.

Some Indians today have professional degrees, hold good positions in government and industry; others, with a meager education, live in grimy poverty, in communities where English is neither spoken nor liked, and often harbor resentments at what they consider past injustices.

Indian parents, without a tradition of formal education behind them, find it hard to understand its need or benefits. Poor families must sacrifice to keep their young ones in school. They have a hard time earning enough money for clothes and shoes and are loath to surrender the potential wage the children might earn. Such parents rarely give youngsters the incentive to attend school regularly or to continue to higher levels. In such cases adult education, which benefits not only the parent but indirectly the child, is called for. Also, the community school, where both adults and children gather to see motion pictures, learn methods of canning, and engage in other activities, was an important center for the group. In many places it has been abandoned.

Other Indian children come from English-speaking homes where there is an understanding of the ideals and customs of a technological society. These can find what they need in the instruction in public schools. But if the youngster does not understand or speak English or uses it only haltingly, and if his pre-school education has been mainly in the ways of an alien culture, he faces serious handicaps.

Public schooling, unless adaptations are made, is not now prepared to deal with the non-acculturated non-English-speaking pupil. These children, unless they have had special instruction, are prevailingly over-age for their classes and their work is below academic norms, the degree depending on their background and the type of training they have had. As a result, proportionately more Indian pupils than white ones drop out of school. Although definite statistics are lacking, it would appear that relatively few go on to college, and only a small percentage graduate. This condition would probably be ameliorated if more counseling were supplied at the college level.

A child with cultural drawbacks seems unable to advance in school as he grows older. The need to learn an entirely new set of values which the public schools take for granted accounts in part for this.

On the other hand, to put a young child in a boarding school away from his parents may result in a lack of orientation in either the Indian or any other civilization. Even limited schooling may be preferable to the destruction of family and cultural ties and the resultant emotional and moral instability.

The Indian pupils' I. Q. is high, low, average, or not known. Available evidence supports the view that they have about the same mental equipment as other American children. Even the most gifted of either group may rank low in I. Q. tests under certain circumstances. These tests reflect "normal" exposure to books, English conversation, and even material gadgets, which underprivileged families, Indian or not, lack.

The present low levels of educational achievement among Indian children present a situation that will take time, even under the most favorable conditions, to correct.

One reassuring sign is the growing recognition among Indians of the need for schooling. Twenty-five tribes provide funds for scholarships. The Navajo Tribe has established a ten-million-dollar scholarship trust fund; the Jicarilla Apaches have set aside one million dollars for the same purpose. The Southern Utes and the Ute Mountain Utes withhold a portion of their children's per-capita payments, putting it in trusts which may be used for their instruction. Almost any tribe with money will make it available to its youngsters who are qualified for further education.

Unfortunately, many families lack tribal or other resources to give their young people training. Financial assistance to enable the child to remain in grade or high school, as well as in college, is often indispensable. These scholarships and loans should be adequate to supply promising children not only living accommodations and books but also modest amounts of spending money.

By treaty, statute, and long undisputed practice and policy the United States has assumed obligations for the education of tribal Indians and has for generations operated Federal schools.

To fulfill this duty the United States appropriates funds under two major statutes. Money is given the Department of Interior for the direct operation of its own Indian schools and also for payment under contracts to States and school districts to contribute to the cost of instructing Indian pupils in public schools. These contracts are made under authority of the Johnson-O'Malley Act of April 16, 1934 (48 Stat. 596) which contemplates that the Secretary of Interior will fix minimum educational standards not less than the highest maintained by the State. This important requirement in the Act permits the Federal Government to set and enforce standards and to see that teachers have a basic understanding of problems which develop from merging the two cultures. This money can also be used for training teachers in techniques necessary for dealing with children where English is used as a second language, or for engaging supplementary teachers.

The policy for years has been to have Indians attend public schools. Recently, however, Congress appropriated money to the Department of Health, Education, and Welfare, Office of Education, to be paid school districts where Federal activities have an impact (Public Laws 815 and 874). These enactments, however, prohibit direction or control over the personnel, curriculum, or program of the public schools. Consequently, when this money is used for the education of Indian children, the Federal Government is barred from setting standards or supplying the additional classes often needed by Indians.

Adult education was authorized by P. L. 959, passed in 1956. It has a fixed statutory limitation of $3,500,000 annually. To be eligible, an applicant must be a tribal Indian between the ages of 18 and 35 living on restricted or trust land. This excludes Indians who have settled in cities and elsewhere from the benefits of such training.

In order to obtain outstanding teachers, tribes with sufficient income could augment teachers' salaries in the Federal schools, or hire additional teachers for children in the public schools. Even the poorer tribes might make a token payment toward their children's education, thus giving them an interest in schools.

Only if greater progress is made in the future than in the past and if programs of education adequate for Indian children at each stage of their acculturation are developed and swiftly put into effect can many of today's pupils be saved from becoming problem children, unable to cope with life. When, however, all Indian education, in whatever variety of school, is adapted to Indian needs, then and only then will the new generation of Indians take their rightful place as useful participants in the society around them.

RECOMMENDATIONS

Indian education should afford the individual the opportunity of being educated to his full capacity. The schools which Indians attend, whether Federal, public, or private, should have the best of the curricula, programs, teaching methods, and guidance used in white education, modified and augmented to meet the special requirements of Indian students. The quality of the instruction the Indian student receives and its adaptation to his needs should be the prime consideration.

The support of the Indian community, its neighbors, and tribal and local government officials should be enlisted for the attainment of these goals.

In reaching these objectives, the education division of the Bureau should consider, on the one hand, the variations between groups, areas, Indian cultures, and the attitudes of adjacent communities, including the existence or absence of discrimination against the Indian child, and, on the other hand, the quality of the teaching staff and their ability to cope with the special difficulties of the student and his parents and to impart knowledge without destroying the moral influences and restraints of the child's family and culture.

In no case should public schools attended by Indians be required to lower their standards. Pains should be taken by all the authorities concerned to avoid any friction which might result from the additional financial burden put on the non-Indian taxpayer by educating Indians in public schools.

The problems raised by taking Indian youngsters from their homes to live in large dormitories, so as to enable them to attend public schools in cities, should be evaluated in terms of the individual's age, his emotional adjustment, and a consideration of his home life.

In making arrangements for attendance of tribal Indians at public schools, the Federal Government, in fulfillment of its obligations, should require that adequate standards be maintained. If standards drop, the Federal Government should no longer allocate money to the school.

The educational duty of the United States does not diminish the obligations of the States, under their constitutions and laws, to educate Indians on a parity with their other citizens.

On the basis of the above criteria, Indian pupils should be divided into three general classes according to their capacity and background:

> (a) Those who will profit from public school: in general, this group would include pupils from an English-speaking, stable family which has adopted the white culture in place of its Indian heritage.

(b) Those who will profit from a Federal school: these would be pupils chosen from unassimilated families because, among other things, they are unable to speak or to understand English.

(c) Those for whom both Federal and public education should be considered.

For the Indian child in group (b) or (c), the following should be provided: early and continuous training in English; instruction in the history, culture, and accomplishments of the Indians; training in arts and crafts; teachers qualified to teach both English as a second language and Indian culture; the motivating of students of different languages and cultural backgrounds; special subjects that Indian children require, such as handling money, etc.

Teachers so qualified should have adequate compensation. Those in the Federal service should have a work-year equivalent in length to that customary in public schools. Besides teacher training, all those in contact with the Indian children—bus drivers, dormitory attendants, and teachers' aids—should have special training.

Children should have counseling through grade and high school. Vocational training should be supplied to those proposing to enter a trade. For those qualified to attend college suitable instruction should be given to equip them to enter and remain there. Counseling should continue through the college years.

Training should have as one of its continuing objectives to discover and enable pupils who show special promise to move into higher education and by this means qualify for executive positions either inside or outside the tribe.

Adequate scholarships, grants, and loans should be provided by the United States to Indians where needed.

Education for adults should be strengthened to include more subjects, as well as the use of TV and other modern techniques, and be extended to more reservations.

The monetary limitation of P. L. 959 should be raised and the restriction which makes this appropriation applicable only to tribesmen on Indian trust land should be broadened.

A strong parent-teacher relationship should be developed and community schools re-established; consultation of school authorities with tribal leaders should be facilitated.

Mission schools should be encouraged to continue to supply their share of the leadership.

The Indian parent must see that his child attends school regularly and should encourage him to do well in his studies.

Where compulsory attendance laws do not exist in a tribe it should take action to have such legislation enacted and enforced.

Money for building schools and the repair of dilapidated ones should be supplied.

Among families in a low-income bracket, provision for economic improvement should go hand in hand with education.

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BUREAU OF INDIAN AFFAIRS

INTRODUCTION

Legislation on Indian Affairs was often enacted tribe by tribe or to meet a particular situation. Over the years there has accumulated a plethora of 389 treaties, 5,000 statutes (many of which may have been repealed by implication), 2,000 Federal Court decisions, more than 500 Attorney General opinions, numerous Interior Department and Solicitor rulings, 141 tribal constitutions and 112 tribal charters, besides a mass of administrative regulations and a gigantic manual. This unwieldy body of prescriptions and directions has handicapped present-day management with the result that many decisions are reached on a legalistic basis instead of on economic, welfare, or social considerations. And the delay and uncertainty caused by the need to consult this mountain of material have been frustrating to the Indians, the public, and the Bureau employees and costly to everybody.

Examples abound. Why continue statutes governing Indian Agents when there have been none since 1908? Equally irrelevant are the minute specifications as to the appointment, compensation, annual and sick leaves of employees, housekeeping requirements, and purchasing details—laws which were adopted to curb the corruption in the Indian Service in the nineteenth century; the later Civil Service enactments and the Public Contracts and Budget and Accounting Acts, which apply throughout the government, are sufficient. The statutes burdening the President with details of Indian affairs, such as discontinuing and consolidating Indian Agencies, are other dead letters.

Though it may be colorful, it is useless to have present legislation prescribing how to pay for wagon transportation, prohibiting Federal payments to bands of Indians at war with the United States or with the white citizens of any State or Territory, and authorizing the money due to a tribe to be withheld if it holds any non-Indian captives until they have been surrendered to the lawful authorities of the United States.

A reduction of the repetitious reviews before decisions are reached will minimize paper work, increase efficiency, and eliminate needless expense. Under present regulations, for example, technicians and lawyers having contracts with tribes must itemize the cost of each meal eaten while on tribal business, listing the tips separately, and must state the subject and cost of every long-distance telephone call. They then submit this voucher to the tribe, which sends it to the Area Office for approval, where, upon favorable action, it goes on to a Field Solicitor who, if he agrees, shunts it to the Superintendent who, if he approves it, returns it to the tribe for payment. And, with all of this elaborate procedure, the amount involved may be no more than the expense of one telephone call or a trip involving a charge of less than $25.

The Bureau for some years has been organized to delegate functions to field offices. This program needs re-examination to determine its adequacy. Is responsibility accompanied by sufficient power to allow the field officer to make decisions; is the authority placed at the administrative level where it will ensure the most satisfactory results?

At the present time there is considerable flexibility in administration. The BIA can through agreements draw on skills in other sections of the government, and under the Johnson-O'Malley Act of 1934, as amended (48 Stat. 596), the Secretary of the Interior may make contracts with Federal, State, and private agencies for the education, medical care, agricultural assistance, and social welfare of Indians. The Act is not broad enough, however, to allow the Secretary to make contracts for the performance by outsiders of some services such as law enforcement.

Various proposals have been made to improve the administration of Indian affairs. Some of them are: abolish the BIA entirely and summarily, with no substitute; shift all the work to the Department of Health, Education, and Welfare; spread it among other Federal Departments and Bureaus; create an Authority like TVA to fix policies to be executed by a general manager; transfer complete responsibility to the States. Sometimes this last plan is accompanied by a recommendation to compensate the State and its subdivisions for the cost; sometimes no recompense is suggested.

The simplest method, however, would seem to be to retain the the existing setup, with the Bureau of Indian Affairs assuming somewhat altered responsibilities and functions. The Bureau has the decided advantage of being already in this field; it needs only revision and redirection to accomplish the purposes which the present-day situation of the Indian demands.

To help with some of the problems, an Indian Advisory Board could be established by law to work in conjunction with the Department of the Interior and have a tenure longer than that of political appointees. This Board could be utilized to evaluate problems in the light of our entire society and Indian welfare.

The form of an organization is always important for accomplishing tasks undertaken, but no organization pattern, however beautiful it looks on paper, will substitute for a skillful, understanding, courageous Secretary of the Interior and a Commissioner of Indian Affairs with competent personnel dedicated to showing Indians that they are the key to their own advancement, educationally, materially, socially, politically, and spiritually; that they can use the key only if they take on responsibility perhaps a little ahead of what they conceive to be their own immediate abilities; and that that accomplishment, whether involving children in school or men and women in the world, constitutes a goal supremely worth their while.

RECOMMENDATIONS

The work of the Federal government in carrying out its responsibilities to the Indian people should, for the present, be continued under the Bureau of Indian Affairs, Department of the Interior.

The Bureau's work, however, should be supplemented by an Advisory Board of distinguished citizens, to be appointed by the President from outside the Government to look at the Indian people as part of the totality of American life. The Board should recommend policies tending to assure the Indians equality of opportunity in the dominant society and to spur them to rise to these opportunities. It should also assess programs from the standpoint of justice and practicability and their long-range effect. The members should serve staggered terms, be provided with an adequate staff, meet frequently, and report from time to time to the President and the nation.

Whenever a function can be carried out more effectively by an agency other than the Bureau of Indian Affairs, it should be delegated to that agency (whether Federal, Tribal, State, or private), but only after discussion with the Indians concerned. To avoid conflicts of policy and objectives as well as to eliminate costly duplication of effort, the Bureau of Indian Affairs should see that the delegated work is coordinated and should make available to the agency its supporting service and establish minimum standards of performance.

The primary function of the Bureau should be an affirmative one: always to counsel and assist the Indian, not to control or regiment him. It should offer him technical advice and other help in the initiation and execution of plans for developing and managing his natural resources, for expanding his economic opportunities, for operating his government, and for bettering his living conditions. To this end, the Bureau should create a special division staffed with competent economists, planners, and community analysts.

In addition, the Bureau, for its own guidance as well as for the benefit to Indians, should arrange to utilize the services of skilled personnel in other Government Departments and agencies as well as of those in universities and private professional organizations. If such obligation requires an amendment to the Johnson-O'Malley Law, it should be obtained.

Statutes, regulations, and procedures should be altered to facilitate the tribes' hiring their own technicians and counselors without the delay, hampering restrictions, and unnecessary supervision now encountered.

Similarly, statutes and rules should be amended, and tribal constitutions and corporate charters should be revised, to permit Indians to make their own decisions over a greater range of subjects than is now allowed.

In a word, the Bureau's aim should be to let Indians conduct their own affairs as soon as possible without supervision. Accordingly, it should encourage their assumption of responsibilities for different functions on a piecemeal basis. Tribal land and resources should, however, remain under the Federal trust until the Indians, when able to hold and manage their property, decide otherwise.

Administration in the Bureau and the Department of the Interior should be simplified and their regulations overhauled for greater efficiency.

Outdated legislation should be repealed.

Under the Indian Reorganization Act of 1934 the Secretary of the Interior is required to inform tribes falling under the law as to the appropriations he will request for their projects before he submits estimates to the Bureau of the Budget. This principle of prior tribal review, now frequently ignored by the Bureau, should be enforced and extended to all tribes.

Finally, the Department of the Interior and the Bureau of Indian Affairs should speak consistently in announcing policies. Conflicts between the policies proclaimed by the Secretary and those executed by the Bureau should never occur.

D. Declaration of Indian Purpose (excerpts)

CREED

We believe in the inherent right of all people to retain spiritual and cultural values, and that the free exercise of these values is necessary to the normal development of any people. Indians exercised this inherent right to live their own lives for thousands of years before the white man came and took their lands. It is a more complex world in which Indians live today, but the Indian people who first settled the New World and built the great civilizations which only now are being dug out of the past, long ago demonstrated that they could master complexity.

We believe that the history and development of America show that the Indian has been subjected to duress, undue influence, unwarranted pressures, and policies which have produced uncertainty, frustration, and despair. Only when the public understands these conditions and is moved to take action toward the formulation and adoption of sound and consistent policies and programs will these destroying factors be removed and the Indian resume his normal growth and make his maximum contribution to modern society.

We believe in the future of a greater America, an America which we were first to love, where life, liberty, and the pursuit of happiness will be a reality. In such a future—with Indians and all other Americans cooperating—a cultural climate will be created in which the Indian people will grow and develop as members of a free society.

LEGISLATIVE AND REGULATORY PROPOSALS

In order that basic objectives may be restated and that action to accomplish these objectives may be continuous and may be pursued in a spirit of public dedication, it is proposed that recommendations be adopted to strengthen the principles of the Indian Reorganization Act and to accomplish other purposes. These recommendations would be comparable in scope and purpose to the Indian Trade and Intercourse Act of June 30, 1834, the act of the same date establishing the Bureau of Indian Affairs, and the Indian Reorganization Act of June 19, 1934, which recognized the inherent powers of Indian tribes.

The recommendations we propose would redefine the responsibilities of the United States toward the Indian people in terms of a positive national obligation to modify or remove the conditions which produce the poverty and lack of social adjustment as these prevail as the outstanding attributes of Indian life today. Specifically, the recommendations would:

1. Abandon the so-called termination policy of the last administration by revoking House Concurrent Resolution 108 of the 83d Congress.

2. Adopt as official policy the principle of broad educational process as the procedure best calculated to remove the disabilities which have prevented Indians from making full use of their resources.

It has been long recognized that one commissioner cannot give the personal attention to all tribal matters which they deserve. He cannot meet all callers to his office, make necessary visits to the field, and give full attention to the review of tribal programs and supporting budget requests. In view of these conditions, we most urgently recommend that the present organization of the Bureau of Indian Affairs be reviewed and that certain principles be considered no matter what the organizational change might be.

The basic principle involves the desire on the part of Indians to participate in developing their own programs with help and guidance as needed and requested, from a local decentralized technical and administrative staff, preferably located conveniently to the people it serves. Also in recent years certain technical and professional people of Indian descent are becoming better qualified and available to work with and for their own people in determining their own programs and needs. The Indians as responsible individual citizens, as responsible tribal representatives, and as responsible tribal councils want to participate, want to contribute to their own personal and tribal improvements and want to cooperate with their Government on how best to solve the many problems in a businesslike, efficient, and economical manner as rapidly as possible.

It is, therefore, recommended that:

1. Area offices be abolished and their authority be given to the agency superintendents.
2. The position of reservation superintendent be strengthened to permit broader exercise of responsibility and authority to act on significant and important matters of daily operations of Indian problems, preventing undue delays.
3. Position qualifications require the employment of superintendents with courage and determination, among other qualities, to help with local problems and be willing to make, without further referral to higher levels, decisions commensurate with the delegated authorities.
4. The superintendent be charged with the responsibilities of cooperating with the local tribal governing bodies in developing the Federal program and budget for that particular tribe or reservation.

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EDUCATION

We recommend that the task of the Indian Bureau be recognized as primarily educational in the broadest sense of the word. The Meriam Survey of over 32 years ago is still a valid guide to action in the year 1961. We conceive education not only in terms of classroom teaching, but a process which begins at birth and continues through a lifespan. Of all the studies, surveys, and research made of Indians, the inevitable conclusions and recommendations are that education is the key to salvation of whatever ills may be, wherever Indians reside.

The first encompassing and formal education provided for Indians was authorized by statutory and treaty arrangements between Indian tribes and the Federal Government. Some tribes provided for their own school systems, financed out of tribal funds.

It would be well if all our children would avail themselves of academic training, but the truth is that only a few complete secondary schooling. The undereducated are of all ages. Lack of education limits our chances to qualify for skilled occupations. A general upgrading of education for Indians and a determined effort to discover and educate our ablest individuals is essential for all age groups.

RECOMMENDATIONS

Federal and public schools

1. In public schools droput rates are excessive, especially between the junior and senior high school ages, and attendance records are unbelievably poor. Therefore, proper guidance and supervisory programs must be reexamined and expanded. Where discrimination in public exists against Indian children, we recommend that it be abolished and these children be accepted in any school of their choice.

2. Recent emphasis on transferring Indian students from Federal to public schools without careful evaluation of local situations should be discontinued unless after study with the local community it is determined that the transfer would benefit the students academically and socially.

3. Policy determining admission to Federal schools must be reexamined and changed. Limiting attendance or reserving for specific tribes fosters discrimination against nearby Indians who need such facilities. Also enrollment of faraway students which crowd local students out should be corrected.

When tribes have prior rights to Federal schools, by virtue of offset payment, these rights must not be ignored.

Local tribes should be given preference in admission to the schools nearest them; however, when local Indians are accommodated, Federal schools should accept all Indian students who wish attendance, regardless of tribe or residence in order to keep facilities operating at maximum benefit.

Since some Federal schools have been closed to Indians juvenile delinquency in that area has been a growing problem. While these schools were open this was not the case. Precautions should be taken to prevent children being placed in substandard foster homes. It is preferred that they be enrolled in Federal Indian schools. Federal schools must be restored to full curriculum and junior colleges should be established in areas where considerable public and federally operated schools exist. Another Federal school should be established to replace the Carlisle School long ago abolished. A Federal Indian school should be established for the children of the eastern region.

In order that good student-teacher and community relationships be promoted, personnel employed to teach in Government schools should be selected on a basis of their interest in Indian students, their knowledge of Indian culture, and their willingness to live and participate in local community life. Salaries should be established at levels comparable to local public rates and recruiting and employment should be done in local competition.

Adequate counseling and guidance services should be made available to all Indian students. It is extremely important that Indian students be informed of all the educational opportunities and resources available to them as Indians and as American citizens. Too often Indian young people, capable of doing college work, are going into vocational training programs because they lack information on finances available to them for college expenses, and they have had little or no counseling help. The teaching and supervisory personnel of the Bureau's education department and vocational training program, the relocation services, and the State education programs must work cooperatively in counseling Indian students. The present grant-aid program, administered by the Bureau of Indian Affairs, should be expanded to include all American Indian students including the off-reservation and nonreservation and all other Indians having the capacity for college work. Appropriations for the grant-aid program should be greatly increased to take care of the need of all qualified applicants. The present policy limiting grants only to students attending State-supported schools should be revised to enable the students to attend the college or university of their choice.

Vocational training

Vocational training programs should be available to all Indians—to reservation Indians, off-reservation Indians, nonreservation Indians—and any other Indian classification—with no age limit when the applicant qualifies. All vocational trainees coming to relocation areas under the Bureau of Indian Affairs program should be allowed to complete their course with subsistence payments, so long as they are making satisfactory progress. Only accredited schools should be used in the vocational training program.

Adult education

Since the transfer of the Extension Services to States has been unsatisfactory in some areas, a department of extension should be reestablished in the Bureau of Indian Affairs. In order to provide more effective educational opportunity, these services should be evaluated and expanded to meet the needs and interests of the people involved.

On-the-job training

Provide CCC type on-the-job and on-the-farm training for both adults and youths. A youth conservation corps may help to solve the problem of juvenile delinquency. It would give young people jobs to keep them occupied, spending money, supervision, and skills that could be useful on their home reservation or elsewhere.

School lunch programs

The school lunch program should be made available to all elementary and secondary Indian students.

Special classrooms

Because of the need for special classrooms for the exceptional and retarded children on reservations it is recommended that these be provided.

CONCLUDING STATEMENT

To complete our declaration, we point out that in the beginning the people of the New World, called Indians by accident of geography, were possessed of a continent and a way of life. In the course of many lifetimes, our people had adjusted to every climate and condition from the Arctic to the Torrid Zones. In their livelihood and family relationships, their ceremonial observances, they reflected the diversity of the physical world they occupied.

The conditions in which Indians live today reflect a world in which every basic aspect of life has been transformed. Even the physical world is no longer the controlling factor in determining where and under what conditions men may live. In region after region, Indian groups found their means of existence either totally destroyed or materially modified. Newly introduced diseases swept away or reduced regional populations. These changes were followed by major shifts in the internal life of tribe and family.

The time came when the Indian people were no longer the masters of their situation. Their life ways survived subject to the will of a dominant sovereign power. This is said not in a spirit of complaint; we understand that in the lives of all nations of people, there are times of plenty and times of famine. But we do speak out in a plea for understanding.

When we go before the American people, as we do in this declaration, and ask for material assistance in developing our resources and developing our opportunities, we pose a moral problem which cannot be left unanswered. For the problem we raise affects the standing which our Nation sustains before world opinion.

Our situation cannot be relieved by appropriated funds alone, though it is equally obvious that, without capital investment and funded services, solutions will be delayed. Nor will the passage of time lessen the complexities which beset a people moving toward new meaning and purpose.

The answers we seek are not commodities to be purchased, neither are they evolved automatically through the passing of time.

The effort to place social adjustment on a money-time interval scale which has characterized Indian administration has resulted in unwanted pressure and frustration.

When Indians speak of the continent they yielded, they are not referring only to the loss of some millions of acres in real estate. They have in mind that the land supported a universe of things they knew, valued, and loved.

With that continent gone, except for the few poor parcels they still retain, the basis of life is precariously held, but they mean to hold the scraps and parcels as earnestly as any small nation or ethnic group was ever determined to hold to identity and survival.

What we ask of America is not charity, not paternalism, even when benevolent. We ask only that the nature of our situation be recognized and made the basis of policy and action.

In short, the Indians ask for assistance, technical and financial, for the time needed, however long that may be, to regain in the America of the space age some measure of the adjustment they enjoyed as the original possessors of their native land.

APPENDIX 1—THE RECENT RECORD

THE MERIAM SURVEY AND SUBSEQUENT PROGRESS

Anyone who has worked in the field of Indian affairs within the last 30 years knows of the so-called Meriam Survey, entitled "The Problem of Indian Administration," prepared by Lewis Meriam and a staff of associates for the Institute for Government Research (Brookings Institution, Washington, D.C.). The study was undertaken at the request of Secretary Hubert Work, of the Department of the Interior, and the report was published in 1928.

The study and the findings were truly monumental. The staff of professionally trained investigators produced the first objective, scientific statement of Indian conditions ever attempted. Dr. Meriam was concerned with living people, not with any theoretical reconstruction of their societies. What he and his associates discovered about the conditions of life on Indian reservations, and what the Federal and State Governments and private organizations were doing or failing to do, shattered the complacency of the American people.

For at least 20 years, the main effort of the administrations in Washington, Republican and Democratic, was to repair the damage that had been done to the Indian people, in accordance with the recommendations of the Meriam report. This effort carried all the way through the Roosevelt administration and half way through the Truman administration, when, for reasons never made clear or justified to the American people, the great reform program was stopped cold.

It is our purpose to examine and expose to public view the decisions and actions which led to the abandonment of this reform program and substituted for it a program of destroying Indian resources, of denying Indian aspirations, and arbitrarily relieving the Federal Government of responsibility for specific tribes in specific areas of interest.

The central finding of the Meriam Survey is stated in the very first sentence of the report:

> An overwhelming majority of the Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization.

The analysis and elaboration of this finding runs to almost 850 pages of text. The staff inquired into and reported on problems of health, education, economic conditions, family and community life and the activities of women, migrated Indians, legal aspects, and missionary activities; and the recommendations covered not only these problem areas but also the broader questions involved in policy determinations, staff and field organization, personnel administration, and statistics and recordkeeping.

As the report in this one sentence characterized the Indian situation without distortion or oversimplification, so also the report proposed a single principle of action which, if faithfully followed, would in time have discovered solutions to the problems of poverty and lack of adjustment which burdened the Indian people. The principle is expressed variously as:

> Whichever way the individual Indian may elect to face, work in his behalf must be designed not to do for him but to

> help him to do for himself. The whole problem must be regarded as fundamentally education.

Again:

> In every activity of the Indian service the primary question should be, how is the Indian to be trained so that he will do this for himself? Unless this question can be clearly and definitely answered by an affirmative showing of distinct educational purpose and method the chances are that the activity is impeding rather than helping the advancement of the Indian.

Or again:

> The fundamental requirement is that the task of the Indian service be recognized as primarily educational in the broadest sense of the word, and that it be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilization or be fitted to live in in the presence of that civilization at least in accordance with a minimum standard of health and decency.

This principle of action was accepted and made operational in the years immediately following the Meriam Survey. Soon after the appointment of Charles J. Rhoades as Commissioner of Indian Affairs, it was announced that educational reform would be the keystone of the new administration. Thus, Secretary Wilbur of the Interior Department stated: "The Indian shall no longer be viewed as a ward of the Nation, but shall be considered a potential citizen. As rapidly as possible he is to have the full responsibility for himself. * * * In order to bring this about it will be necessary to revise our educational program into one of the practical and vocational character."[1]

An immediate effect of these recommendations was an increase in appropriated funds for new facilities, equipment, and salaries. Teacher qualifications were brought into line with other school systems; regional conferences of administrative and teaching staffs resulted in greater unity in goals and methods. The boarding schools were limited to older children and emphasis was shifted to vocational training. Community day schools were developed to bring schooling closer to the home and indeed to service the community.

Not until the succeeding Roosevelt administration, however, was this broad educational principle given statutory support and put into full operation. This was made possible by the adoption of the Indian Reorganization Act of June 18, 1934. The new law was aimed at repairing damages wrought in the past as well as opening the way to constructive action in the future.

It was permissive, and as to those tribes which adopted the act by formal vote of their members, it prohibited the individual allotting of tribal lands and it authorized the Secretary of the Interior to return to tribal ownership lands which had been withdrawn for homestead entry but had not been preempted. The act also authorized an annual appropriation of $2 million to purchase land and add it to the diminished resources of the tribes, and established a revolving credit fund of $10 million (later increased to $12 million), to enable Indians to improve their land holdings and supply themselves with necessary equipment.

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[1] Quoted in the New York Times, April 17, 1929.

But the real heart and core of the Indian Reorganization Act was the recognition of the inherent right of Indian tribes to operate through governments of their own creation, whether customary or formalized by written documents, and through business corporations which the tribes could create and manage.

In later years when the principle of the educational process came under attack, that attack was centered on the tribal governments and tribal corporations. It was argued that these legal devices hindered the advancement of the Indian people, encouraged them to remain aloof from the mainstream of American life, and fostered unrealistic attachment to tradition and to the vanished past. Even while the argument was winning adherents and eventually influenced legislation, the evidence against the argument was taking form in Indian activities all across the country.

The start was slow in many cases, since the written constitutions introduced ideas and procedures which had not been part of customary practice. The idea of majority rule, taken so for granted in Anglo-Saxon governing bodies, was at first a divisive rather than a unifying principle in Indian groups, where action is customarily delayed until all the people are of one mind or at least the dissidents agree to stand aside. Also in the beginning, so accustomed were the tribes to wait on the decision of the Federal official, they were reluctant to act on their own and to exercise the powers contained in their covenants. That early period passed, and of course performance under the tribal constitutions and charters varied from tribe to tribe. The tribes that made most effective use of the inherent and conferred powers of their written constitutions became, in effect, operating municipalities, managing property, raising revenue for public purposes, administering law and order, contracting for the services of attorneys and other professional advisers, and promoting the general welfare of the people.

The deeper meaning and purpose of tribal government was perhaps missed or misunderstood by those who argued against the program. The meaning and purpose were educational, in that broad sense used throughout the Meriam Survey. Through the machinery of tribal government the Indian people for the first time since the days when they met as camp councils to plan a hunt, or as a council of headmen to meet an emissary from Washington, they could consider their problems together, reach decisions, and live with the results of those decisions. Sometimes the results were disastrous to the careers of individual leaders; the people "turned the rascals out," even as other American citizens were doing in neighboring communities and in the State and Nation. But these were lessons learned and it can be said that the Indians for the first time began to have some understanding, through their own experiences, of the mechanics and the political philosophy of American society. Additional proof of the effectiveness of this learning process can be adduced from the manner in which tribal leaders began to travel beyond the borders of their own tribes to join with leaders from other tribes in forming regional, inter tribal organizations and finally, in 1944, creating a national organization [2] which has won national recognition as the representative voice of the Indian people.

In 1956, the then Congressman, Lee Metcalf of Montana, acknowledged the status of this organization, in saying: "It is heartening to me to know that an organization like the National Congress of American Indians exists and functions. If no such body was in existence the Indians of the United States would be faced today with the necessity of bringing about the formation of an equivalent representative organization." [3]

As Indian leaders enlarge their experiences in local and intertribal action, they will inevitably move into the county and State political scene and into national political action. Individual leaders are already participating in the programs of chambers of commerce and civic or service committees, winning election as county commissioners and school board members, serving in their State legislatures, and running for and winning seats in Congress.

In spite of this very promising beginning and of the underlying educational principle operating as indicated, the Indian Reorganization Act, and specifically the tribal government program, has been under constant attack. Thus, a subcommittee of the House Committee on Interior and Insular Affairs, after conducting an investigation of the Bureau of Indian Affairs, declared in 1954:

> The organization of Indians into tribal groups with constitutions and charters derived from the Secretary of the Interior [4]—in numerous instances without affirmative tribal approval or comprehension of what was being undertaken—appears to constitute one of the outstanding legal disabilities of Indians at the present time.[5]

It should be emphasized in passing that the Indian Reorganization Act provided specifically for the method of adopting a written constitution, namely "by a majority vote of the adult members of the tribe." Whether or not a question at issue in any election is comprehended is a subjective judgment which may be raised in any election, local or national. In actuality, every election on a tribal constitution, or charter, or amendments to these documents is preceded by an intensive educational effort.

A more judicious appraisal of tribal self-government was offered in 1948 by the Committee on Indian Affairs of the so-called Hoover Commission.[6] After reviewing the record of things that had worked in the long history of Indian affairs administration, the Commission reported: [7]

> A third experience that is encouraging is the effort under the Indian Reorganization Act to establish self-government

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[2] The National Congress of American Indians.

[3] In closing banquet address of National Congress of American Indians, 13th Annual Convention. Salt Lake City. 1956.

[4] The subcommittee report is in error at this point, if it intends to say that tribal governments derive their powers from the Secretary of the Interior. The settled law is that the tribal right of self-government is inherent, though it may be limited by specific acts of Congress.

[5] Report No. 2680. 83d Congress. second session. Sept. 20, 1954.

[6] Commission on Organization of the Executive Branch of the Government. Members of the working Committee on Indian Affairs were: George A. Graham, Chairman; Charles J. Rhoades; John R. Nichols; and Gilbert Darlington.

[7] Report of above committee, p. 26.

> among the Indians. The act marked the end of the attack on Indian institutions. The attempt to revive ancient institutions in the 20th century, if there was such an effort, was a mistake, as has been noted. But the end of cultural hostilities and the effort to establish self-government in tribal or village communities has been all to the good. There can be no doubt about the soundness of applying the principle of self-government to Indian problems.
>
> Indian leadership is developing. Indian people are analyzing their problems and assessing their conditions in a realistic way that is very promising. Some of them see very clearly that they could do more for themselves with very reasonable assistance, than Uncle Sam would or could do for them. The dividends from this investment in self-government are just beginning to come in, and there are some real weaknesses in the system as it stands, but Indian self-government is clearly a potent instrument if wisely used.

The Hoover Commission report was even more specific in citing the gains that had been made under the Indian Reorganization Act and in relating these gains to the educational process which concerns us here. Thus, the report stated:

> Tribally owned and controlled economic enterprises are playing a significant part today in the improvement of Indian life. There are tribal (or village) loan funds, herds, forests, range lands, sawmills, fisheries, canneries, stores, marketing cooperatives, and other enterprises.
>
> The benefits are real and are of at least four kinds. (1) These projects produce revenue which Indians need. In the enterprises involving agricultural resources a modern conservation policy tends to be followed and the assets are growing in value. (2) The enterprises provide employment for Indians. Some, such as sawmills, create a great deal of employment and the income from wages far exceeds the income from dividends (per capita payments). These enterprises are aiding the economic advancement of individual Indians. (3) Tribal loan funds are being used to secure capital—livestock, farm machinery, equipment, boats, fishing gear, trucks—for individual Indians. (They are also being used to further education and provide for home construction and repairs.) The benefits are direct. Other enterprises also are helping Indians to climb a rung or two on the economic ladder. Range units owned by the tribe or by individual Indians are providing the range in which Indian owners graze their livestock. * * * Cooperatives assist individual craftsmen to get materials and market their products at a profit. (4) Not the least of the benefits of these Indian enterprises is the education they provide in present-day economic institutions. It would be incomplete, to say the least, to educate Indian property owners without giving them any experience in corporate activity. Corporate organization is as essential for many Indian projects as it is for non-Indian.

> When Indian enterprises were launched, some of them many years ago, they were given very careful supervision. Indian service officials were largely responsible for their success or failure and had to take an active part in management to insure success. Under the Indian Reorganization Act, tribal authorities exercised more discretion but Federal supervision was still extensive. Agricultural extension agents, for example, were very active in reviewing applications for loans and in following up to secure payment. Loans were also subject to approval by superintendents. Quite recently Federal supervision has been curtailed, the power of tribal authorities to act without approval has been extended and they have found themselves with a much greater share of the responsibility for management.

Other gains under the Indian Reorganization Act contributed to the atmosphere of hopefulness which gradually came to prevail in Indian communities during the New Deal.

Lack of an adequate source of credit and the technical advice needed to use credit effectively were prime reasons for the poverty reported in the Meriam survey. Some meager beginnings in supplying credit had been made in 1908 on a few reservations. The first general appropriation for this purpose was authorized in 1911, in the amount of $30,000; and annually thereafter similar small amounts became available. Repayments on these small loans were converted back into the U.S. Treasury and the money was lost to the credit program, unless reappropriated. Under this program, Government personnel purchased the items for which the money was borrowed, and in effect resold the items to the Indians—a procedure that permitted the Indian client scant opportunity to decide the kind, type, or quality of cattle or farming equipment he was acquiring. The Indian, whether he repaid his loan promptly or not, could not be assured of continued financing, since the amount available varied from year to year according to the appropriations made by Congress. Of over $7 million loaned during this earlier period, generally without planning or real participation by the Indian, approximately $500,000 was subsequently canceled as uncollectable and about $2 million was still owing after 10 or 15 years and would never be collected.[8]

The record of transactions under the Indian Reorganization Act is in striking contrast. Between 1935 and about 1950 a total of $5,500,000 was appropriated, out of a combined authorization of $12 million, and to this credit pool Indian tribes added $1,800,000 of their own tribal funds. Since repayments went back into the revolving fund and became available for relending, it was possible during this period of years to make loans of approximately $17 million, including Federal and tribal money.

The primary loan was made by the United States to a tribal corporation, credit association, or cooperative group, and these bodies in turn loaned to individuals or tribal enterprises. The tribal corporation or the credit group assumed the responsibility of obtaining repayments, and moreover each client loan was based on careful planning between the tribal lending agency and the client. The individual made his loan purchases, usually on a tribal purchase order, with technical assistance provided as needed by tribal credit committee or the extension agent.

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[8] Taken from Annual Report of the Commissioner of Indian Affairs, 1948

These factors in combination completely changed the credit record. On primary loans from the United States to tribal corporations, credit associations, and cooperative groups, 96.6 percent had been repaid on their due date by June 30, 1960; 0.5 percent had been extended; 0.5 percent had been canceled; and 2.2 percent had been declared delinquent. As of June 30, 1960, in relending operations conducted by the tribal groups, 92.35 percent had been repaid, 3.95 percent had been extended, 1.78 percent had been canceled, 1.12 percent had been declared delinquent, and 0.80 percent were in process of liquidation. These latter figures do not include the Juneau area.

The effectiveness of this credit program is reflected by other factors. For example, Indian-owned livestock, between 1932 and 1947, increased from 171,000 to 361,000 head. Total agricultural income to the Indians increased from $1,850,000 in 1932 to almost $49 million in 1947, the latter figure including about $12 million worth of farm products consumed at home. In these years also, Indians increased the acreage of croplands farmed by almost 400,000 acres; likewise they took over the operation of more than 7 million acres of grazing land. These were lands which previously had been farmed or grazed by non-Indians. Indian operations were made possible as credit became available for investments in improvements, equipment, stock, and so forth.

The Indian Reorganization Act authorized a land acquisition program, through appropriation of funds and through the return to Indian ownership of certain ceded lands. Under this authority lands were acquired for tribes, bands, and groups of Indians whose land base had been drastically reduced or for whom no land had ever been provided. Plans were also formulated for consolidating scattered tracts of Indian-owned land through purchase, relinquishment, and other arrangements by which key tracts were obtained and blocked out to form economic units. Land was acquired under various authorities and appropriations, as follows:

	Acres
Indian Rorganization Act funds	395, 500
Miscellaneous (gratuity appropriations, cancellation of reimbursable debts, et cetera)	334, 000
Tribal funds	390, 000
Restoration of ceded lands (Sec. 3, Indian Reorganization Act)	965, 000
Special legislation (transferring public domain)	1, 063, 000
Uintah and Ouray legislation	510, 000
Puertocito purchase (Navaho)	31, 663
Total	3, 689, 163

These actions, briefly told, grew out of desperate need—but so effective were they that they brought an end to further property losses and even reversed the downward trend of Indian expectations. Then the effort weakened and finally stopped entirely.

THE ABANDONMENT OF PROGRESS

The lack of continuity in Federal Indian policies and programs has done more to discourage Indian efforts than perhaps any other aspect of administration. The shifts and reversals and repudiations occur not just every 4 years with changes in the national administration, but locally every change of a superintendent or other key official at the reservation level results in shifts and changes which after awhile become too bewildering to follow. The tourist who makes a quick trip to an Indian reservation and afterward writes an article about the "apathetic" and "fatalistic" Indians can have no idea what it means to live in a situation where on 24-hour notice one program stops and another starts; one man leaves and another man comes to take his place; or a hospital or school is closed and the substitute institution is 50 or a hundred miles away in a strange community; or the United States decides to build a dam and flood out the homes that people have lived in since before the time of Columbus. The time comes when people give up trying to understand what is happening or to improve the situation in which they live.

This unhappy characteristic of Indian affairs administration is called to attention in the report of the Hoover Commisson: [9]

> The pessimistic conviction that no reform will be carried to a finish is so deeply embedded in the minds of reservation Indians, that it will have to be dealt with continually and persistently to overcome their doubts and maintain their support. The personnel of the Indian Service is also affected by the same doubts.
>
> Some of the policies written into law in the Indian Reorganization Act of 1934 have proved to be effective judged by any standards, yet the support for them has faded out nonetheless. The loan program has produced good results and losses have been extremely small. Yet funds have not been made available in sufficient amounts to get the results that are possible. The land purchase program to roundout Indian ownerships and establish Indian families on farms and ranches was launched with enthusiasm but it has languished. Today there are partially completed irrigation systems in which the land has not been subjugated, ditches have not been completed, and water has not been brought to the land because of lack of funds. An investment has been made but not been carried to the point where it brings in the full returns. This sort of shiftlessness is not a good example for Indian people whom, it is supposed, we are teaching to be good businessmen. On some reservations a number of Indian families had made a good start in the cattle business before World War I. Then policy changed and their stock was sold. Twenty years later it was again the policy to get them established with their own herds. If there are a few skeptics who wonder if the weak support for the present policy does not augur another change, their doubts are understandable.

The closing sentence in the above paragraph, written in 1948 or perhaps earlier, was indeed prophetic. A basic policy change was even then in the making, in fact had been on its way for some time.

The Indian Reorganization Act had encountered opposition even in its inception. The fact that the legislation in draft form was taken to the Indian people and discussed with them in regional conferences, where suggestion and criticisms were invited—a procedure that never before had been followed in the consideration of Indian legislation—did not silence the attacks. The law, as adopted, was permissive and was made applicable only on those reservations where it was adopted by a vote of the people. Again, an unprecedented procedure, and still the attacks continued.

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[9] Committee on Indian Affairs, Report to Hoover Commission, p. 22.

For most part, this early opposition reflected a misunderstanding of the purposes of the act. Perhaps it reflected a lack of confidence in the intentions of the Government. Another generalization that might be made, after reviewing the testimony in printed hearings, is that the Indians in 1934 were not ready to discuss basic policy reform. Their views had never been sought; it was still rather a rare thing for a tribal delegation to make the long trip to Washington to take sides either for or against proposed legislation.

Beginning in 1928 an investigating subcommittee of the Senate Committee on Indian Affairs held hearings throughout the Indian country and in time gathered mountainous data, consisting principally of complaints against local bureau employees and local conditions. Reports of these hearings were published in due course, on occasion a higher official would be reprimanded, but generally the cause of the complaint remained unsatisfied. The Indians had grown accustomed to inaction.

The Indian Bureau, of course, was vulnerable. The Meriam Survey had revealed its many weaknesses, its inadequacies, its bureaucratic callousness to human misery. In the minds of many Indians and many private citizens other than Indians, nothing short of the abolition of the Bureau would accomplish any good. The men who had most to do with Indian policy in the Roosevelt administration, Secretary of the Interior Harold Ickes and Commissioner of Indian Affairs John Collier, had been among the sharpest critics of the Bureau for some years prior to their assumption of office.

The culmination of this early phase of opposition is perhaps reflected in Senate Report No. 310 of the 78th Congress, 1943, which in 33 recommendations would not only eliminate the Indian Reorganization Act but in a matter of 3 years abolish the Indian Bureau completely.

A more substantial attack on the Bureau of Indian Affairs and its functions was mounted in the 80th Congress. That was the first Congress in more than 20 years in which control had passed to the Republican party and a determined effort was made to reduce expenditures. The executive branch, bureau by bureau, was hailed before appropriate congressional committees and required to justify operations and costs.

Mr. William Zimmerman, then Acting Commissioner of Indian Affairs, was called before the Senate Committee on the Post Office and Civil Service and was asked to supply information as to what functions of the Bureau might be discontinued, what field agencies and employees might be eliminated, and what savings might be affected by these actions. The inquiry finally resolved itself into a question of what Indian tribes might be removed from Federal supervision and responsibility as a first step toward reducing Government costs. The Acting Commissioner, under subpena, supplied three tribal lists. The first, a short one, indicated tribes from which Federal supervision might be removed in the immediate future; the second, tribes from which supervision might be removed in a period of 10 years; and a third list naming tribes that would need help and supervision for an indefinite period.

An effort was made to rationalize these divisions by setting up four criteria, roughly: (1) the extent or degree of acculturation of a given tribe; (2) the economic conditions of a tribe, as reflected in available resources; (3) the willingness of a tribe to dispense with Federal assistance; and (4) the willingness and ability of the State in which the tribe was located to assume responsibility for the services extended to other citizens of the State. These criteria contained many subjective factors, or they relied on data which actually did not exist. The listing of the tribes in the three categories, accordingly, could be characterized at best as an informed guess. Mr. Zimmerman understood this quite well, but so intent were some individuals in Congress to relieve the Government of responsibility with respect to certain tribes and eventually for all tribes that this testimony was used, unfairly and often out of context, as a base from which to launch a new and vigorous attack against the reform programs of the previous 20 years.

In that same 80th Congress (second session) the effort of the Department of the Interior to recognize and give legal status to the lands claimed and used by the Natives of Alaska came under vigorous attack.

The treaty of 1867 by which Alaska was acquired from Russia provided that the United States would legislate in behalf of the Natives of Alaska and through such legislation determine the nature and extent of the rights of the Natives in the lands they occupied. Laws passed in 1884 and again in 1891 recognized that the Natives had valid rights in land and prohibited others from going upon or occupying lands in the actual possession of Natives. These were indefinite and inchoate rights which placed the burden of proof upon the Natives. In practice, the Natives gave way and made no effort to protect themselves against intrusion in their trapping areas and in the fisheries in southeastern Alaska.

Authority was given the Secretary of the Interior to designate as an Indian reservation any lands previously set aside for Native use, including in the designation any additional public lands actually occupied by Natives. However, the designation would not become final until approved by a vote of the Natives, voting by secret ballot. During the years 1941–44 eight reservations were thus designated, of which six were ratified by the Natives and two were rejected.

The storm broke in 1946, when the Secretary proposed to establish 16 additional reservations, subject to ratification by the Natives. Amid charges that the Secretary was attempting to turn over the territory of Alaska to the Natives and was blocking settlement and development of the territory's wealth, proposals were offered in Congress to revoke the Secretary's actions in creating the six reservations and to repeal the special Alaska amendment to the Indian Reorganization Act, thus depriving the Secretary of authority to create reservations in the future. These proposals failed, but the discussions centered around them and around Native rights swelled the attack against the Government's Indian policy, and specifically against the Indian Reorganization Act.

In an effort to give some guidance to the discussion in Congress, the Bureau of Indian Affairs in 1947 offered drafts of legislation which would provide for the creation of tribal corporate enterprises and would empower the tribes to carry on their own business as tribal entities, subject, during an interim period, to the advice and supervision of a local committee consisting of members appointed by the Federal Government, the State, and the tribe. However, the congressional committees obviously favored more drastic measures. The tribal corporation approach suggested by the Bureau was ignored and thinking was directed toward liquidating the Indian service primarily by transferring its functions to other already existing agencies of the Federal Government. Thus, bills were proposed in that 80th Congress to transfer health work to the U.S. Public Health Service, Indian forestry and extension work to the Department of Agriculture, Indian irrigation to the Bureau of Reclamation, and so forth.

In a speech before the annual meeting of the Home Missions Council at Buck Hill Falls, Pa., January 6, 1948, the Assistant Secretary of the Interior, William E. Warne, referred to these congressional developments:

> Wholesale and indiscriminate relinquishment of Federal responsibilities for the protection of Indian property rights is not justifiable, however, and would be dangerous to the Indians. Many critics fail to discriminate adequately between those Indians who have progressed a long way toward assimilation, and those * * * who have as yet had little opportunity for association with non-Indians. As a matter of fact, it is easy, when discussing Indians in Oklahoma, to be so impressed with the economic and political competence of many representatives of the Five Civilized Tribes as to forget that there are several thousand members of these same tribes isolated in 100 percent Indian communities in the eroded Cookson Hills, and in eastern McCurtain County, who speak very little English, and who a few years ago had an average net annual cash income of $54 a year.

The trend of congressional thinking is further indicated in the memorandum of August 5, 1952, addressed by Commissioner Dillon Myer to all Bureau officials, in which the Commissioner wrote:

> I think it may be fairly said that current congressional actions with regard to the Bureau of Indian Affairs and Indian appropriations indicate future appropriations will be limited largely to financing items which will facilitate withdrawal. This approach is already evident to both House and Senate with respect to appropriation of construction funds. Under this condition it is imperative that the Bureau develop and implement programs to assist Indians to become better qualified to manage their own affairs.

This memorandum was not a directive to Bureau personnel to organize programs designed to increase Indian management skills. The real purpose was to urge, on the part of all staff members, greater speed in devising methods and procedures by which the Federal Government might be relieved of responsibility in the Indian field. Thus, the Commissioner continued in his memorandum:

> Full understanding by tribal membership should be attained in any event, and agreement with the affected Indian groups must be attained if possible. In the absence of such agreement, however, I want our differences to be clearly defined and understood by the Indians and ourselves. We must proceed, even though Indian cooperation may be lacking in certain cases.

By 1950, when Dillon S. Myer was appointed Commissioner, the policy of rehabilitation and enlargement of physical resources, the advancement of local self-government, the acceptance of educational process as a guide to policy and action—all of which flowed from the recommendations contained in the Meriam report—was scrapped.

Beginning in 1948 the basic land policy of the Bureau was reversed, and instead of acquiring land to add to already inadequate resources, emphasis was placed on the removal of restrictions against sale, thus allowing Indian land to pass out of Indian ownership. In a 10-year period, 1948–57, a total of 2,595,414 acres of individually owned trust land was removed from trust status, some of it for public purposes. The net acreage removed from trust status and made available for sale was 2,174,518 acres, or more than one-half of the area which had been painstakingly acquired since the enactment of the Indian Reorganization Act of 1934. Moreover, the land was moving out of trust status at an accelerating rate, as indicated by the fact that during the first 5 years of the period (1948–52) about 805,000 acres were involved, while in the final 5-year period (1953–57) about 1,800,000 passed out of trusteeship.[10]

The credit program, which got off to such an encouraging start in the early years of the New Deal, experienced a similar shift of emphasis. Obviously, under a policy of withdrawal and under the compulsion of reduced appropriations, the expedient strategy for the Bureau was to reduce programs wherever possible, regardless of the effect this might have on Indian development. A smaller land acreage under trusteeship would reduce the cost of administering it. Credit operations likewise could be reduced by advising Indians to avail themselves of commercial credit sources and by increasing the interest rate on loans from the Federal revolving credit fund in order to encourage commercial borrowing. These devices were used, and by July 1954 the program was practically at a standstill. This is reflected in the fact that at that time the unused cash balance in the loan fund was $5,280,000 or about $836,000 more than the total amount available in 1941.

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[10] The association on American Indian Affairs, in its Newsletter for June 1955, commented on the situation:

"What are the reasons for this stagnation? Bureau officials reply blandly that applications for loans are not coming in, and that more and more credit is being obtained from other sources. Both of the answers may be true, but they tell only part of the story. The real reasons seem to be three: (1) Most importannt is the general understanding by Indian and Bureau employees that the commissioner wants to curtail lending and in time liquidate the revolving fund; (2) A recent change in the regulations, as a result of which loans may be made only for 1 year, is not understood by Indians and has deterred applications. Indians, knowing that certain projects cannot possibly pay out in less than 5 years, refuse to make 1-year loans, for at the end of each year the burden is on the Indian to prove to Bureau officials that his loan should be renewed for another year; and (3) the last reason is lack of personnel. Determined to unburden the Bureau of agricultural extension services for Indians, the Commissioner has been transferring responsibility for these services to States as rapidly as possible through Johnson-O'Malley contracts. The transfer of funds under these contracts has involved the transfer of money appropriated to the Bureau for extension activities plus a substantial sum otherwise available for credit operations. Thus, the Bureau's Branch of Credit is undermanned and immobilized."

Finally, we come to the so-called termination policy, embodied in House Concurrent Resolution 108 of the 83d Congress, first session, adopted August 1, 1953 (text reproduced on page 535), and realize that the effort and high promise of 20 years are abandoned. The basic educational process advocated by the Meriam Survey, and implemented and carried forward under the Indian Reorganization Act, is nullified. Instead of social and economic betterment, the Indians are offered homelessness and deeper poverty than any they have known. And to add insult to injury, this is to be accomplished in the name of citizenship.

The first two whereas clauses of this resolution are not only at variance with the facts, they defame the Indian people. Fact 1: Indians are subject to the same laws and are entitled to the same privileges and responsibilities as other citizens. Indians are citizens, without any qualifications or limitations. Fact 2: Indians are not, never have been, wards of the United States. The word has been loosely used and widely misinterpreted as a consequence of the trusteeship exercised by the United States over Indian property and of the exclusive jurisdiction exercised by the Federal as opposed to State government. Fact 3: The rights and prerogatives of citizenship were conferred upon all Indians born within the United States by the act of June 2, 1924. Fact 4: The Indians have assumed and do assume their full responsibilities as American citizens, in peace and war. Like other citizens, they are exempt from certain taxes, and they are also like other citizens in prizing this lawful advantage.

The only apparent purpose of the whereas clauses is to provide a pious motive for the malicious policy enunciated in the body of the resolution. That policy would: (1) withdraw trust protection provided by treaty and statute for Indian lands and other property; (2) discontinue Federal services, whether or not local or State governments are prepared or able to provide substitute services, and (3) devise legislative means to nullify treaty and statutory obligations to the Indian people.

When a patient is committed to a doctor's care and the doctor assumes responsibility, a definite relationship is established. The patient is to follow the doctor's advice; the doctor must strive to effect a cure. If, after a period of time, the patient fails to respond to treatment, it is not the doctor's privilege to abandon the patient or take action to hasten the patient's demise.

The Indian people in 1928 were ailing. As the Meriam Survey indicated: "An overwhelming majority of the Indian people are poor, et cetera." In the intervening years, remedial measures were instituted. The patient showed signs of improving. The great war effort interrupted the flow of assistance to Indian communities—as a matter of fact, the Indians contributed heavily to that effort, as members of the armed services and as war industry workers. When the war ended and the Indians returned to their homes, expecting to resume their tribal and individual rehabilitation programs, they found an unwilling physician: a Congress that refused to provide funds for land purchase and development; a Department of the Interior that dried up the credit program.

The Navajo and Hopi Indians were saved by a blizzard that centered national publicity on their poverty. Other tribes, missed by the storms of that dreadful winter of 1947–48, were equally hungry, but the newspapers never discovered their plight.

By August 1953, the healing physician had peeled off his rubber gloves and removed his white gown. Indian reform was dead. The answer to poverty and social and economic maladjustment was terminated.

The copy of House Concurrent Resolution 108, 83d is a part of this report.

HOUSE CONCURRENT RESOLUTION 108, 83D CONGRESS, FIRST SESSION

Passed August 1, 1953

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Resolved by the House of Representatives (*the Senate concurring*), That it is declared to be the sense of Congress that at the earliest possible time, all of the Indians tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Attest:

LYLE O. SNADER,
Clerk of the House of Representatives.

Attest:

J. MARK TRICE,
Secretary of the Senate.

E. Report to the Secretary of the Interior by the Task Force on Indian Affairs (excerpts)

(The "Udall Task Force" report)

I. INTRODUCTION

OPENING STATEMENT

During the 90 years which have elapsed since the U.S. Government ceased to make treaties with Indian tribes, Congress has appropriated millions of dollars[1] to finance its programs for the protection, subsistence, and acculturation of this relatively small group of Americans. Both with and without Federal assistance, many Indians have left the reservations and taken up new lives for themselves among their non-Indian neighbors. However, significant numbers have remained in Indian country and preserved their tribal identities.[2]

From time to time during these 90 years, critics of the Federal Indian program have raised the question of how long the Government must continue its special relationship with Indians. Underlying their concern has been an awareness of the accelerating cost of the program, a belief that to provide special services for Indians places them in a privileged category, and a contention that, because of excessive paternalism, the Federal program prevents Indians from achieving their maximum degree of self-sufficiency.

An examination of the history and present status of Indian affairs reveals a certain justification for the reservations which these critics have expressed. Annual direct expenditures by the Federal Government for its services to Indians have risen from slightly over $7 million in 1871 to more than $160 million in 1961. Many treaties and hundreds of Federal statutes qualify Indians for services in the fields of health, education, welfare, banking and land management which are not available from governmental sources to any other group of Americans. Furthermore, the administration of these services has often been characterized by a paternalistic emphasis which has fostered continuing Indian dependence.

Beset by criticisms based on pragmatic and philosophical considerations such as those listed above, Federal administrators and Congressmen have at various times offered proposals for terminating the special relationship between Indians and the Federal Government. A paramount feature of many of these proposals has been the abolition of the Bureau of Indian Affairs. Such demands were strongly made in the last decade of the 19th century, during the years 1917–18 and 1922–24, and have dominated much of the Federal Indian policy in recent years.

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[1] Since 1789, the U.S. Government has appropriated nearly $3 billion for Indian affairs. The bulk of this amount has been spent since 1871, when the policy of negotiating treaties with Indian tribes was discontinued. (Committee on Interior and Insular Affairs, House Committee Print No. 38, 85th Congress, second sess., 1959, pp. 20 and 21.)

[2] In its most recent request for appropriations, the Bureau of Indian Affairs estimates that there are 360,000 Indians still living on reservations and 160,000 living in other areas (Department of the Interior Justifications for Appropriations, fiscal year ending June 30, 1962, Bureau of Indian Affairs, p. 30).

Yet, even those who are most eager to end this special relationship are troubled by the fact that the bulk of the reservation Indian population is less well educated than other Americans, has a shorter lifespan, and has a much lower standard of living. Furthermore, critics of the present program know that States in which many of these Indians reside have limited financial resources and, unless they are subsidized from the Federal Treasury, cannot undertake the rehabilitation programs which are necessary if Indians within their jurisdictions are to advance economically, socially, and politically.

The distinct legal status of Indians is a further hindrance to the abolishment of the Bureau of Indian Affairs and the withdrawal of the Federal Government from this field. In many decisions, the U.S. Supreme Court has upheld Washington's responsibility for helping Indians find solutions to their problems. Treaties and statutes still in effect recognize Indians as partial wards of the Federal Government and as representatives of "domestic, dependent nations," while also recognizing them as citizens of the United States.

Through the years, the Indians themselves have come to have an ambivalent regard for the Federal Government. They look to it for aid, but also resent and resist its attempts to undermine their social and culutral identity. Seldom do they perceive any connection between what they want and the demands upon them which securing it imposes. Similarly, many well-intentioned non-Indians who recognize and respect the underlying philosophies of the Indian way of life ignore or fail to see this connection. Thus, while urging Indians on the one hand to retain the old ways, they exhort the Federal Government to improve Indian health and the Indian standard of living, changes which cannot be provided without affecting the old ways they wish to preserve.

Confronted by conflicting opinions as to what the Indian's place in American society is and should be, we have had Indian policies enunciated by Congress and the Executive which, over the past 75 years, have run to gamut from extreme harshness to extreme paternalism. Inevitably, the results have disappointed both the Indians and those who were sincerely and deeply concerned about their welfare.

The task force will not concede, that even with all its complexities, the job of developing and administering an effective program for American Indians is impossible of execution. However, it must be a joint effort. Responsibility for the solution of the many problems confronting each tribe and reservation lies not only with the Bureau of Indian Affairs, but also with the Congress, with the Indians, with local agencies of Government and, very importantly, with the American people. Furthermore, this solution cannot be found through a return to the extremes of the past.

The programs which the task force suggests in the pages which follow are programs of development—development of people and development of resources. What we are attempting to do for those in the underdeveloped areas of the world, we can and must also do for the Indians here at home. Furthermore, to insure the success of our endeavor, we must solicit the collaboration of those whom we hope to benefit—the Indians themselves. To do otherwise is contrary to the American concept of democracy. Basically, we must not forget that ours is a program which deals with human beings. We must have faith in their abilities to help themselves and be willing to take some risks with them.

STATEMENT OF OBJECTIVES

In preparing their report, the members of the task force attempted to define what they feel the objectives of the Federal Indian program should be and to offer proposals aimed at fulfilling these objectives. At the present time, the Bureau of Indian Affairs defines its aims as follows: [3]

> 1. To create conditions under which the Indians will advance their social, economic, and political adjustment to achieve a status comparable to that of their non-Indian neighbors.
> 2. To encourage Indians and Indian tribes to assume an increasing measure of self-sufficiency.
> 3. To terminate, at appropriate times, Federal supervision and services special to Indians.

The task force feels that recent Bureau policy has placed more emphasis on the last of these three objectives than on the first two. As a result, Indians, fearful that termination will take place before they are ready for it, have become deeply concerned. Their preoccupation was reflected in vigorous denunciation of the so-called termination policy during the many hearings which the task force conducted with Indian leaders. No other topic was accorded similar attention. It is apparent Indian morale generally has been lowered and resistance to transition programs heightened as a result of the fear of premature Federal withdrawal. Now, many Indians see termination written into every new bill and administrative decision and sometimes are reluctant to accept help which they need and want for fear that it will carry with it a termination requirement. During the task force hearings in Oklahoma City, Acting Commissioner Crow pointed out to those present that a few years ago it was possible for Bureau employees to sit down with Indians and talk constructively about the time when special Federal services for Indians would no longer be provided. "Now," said the Commissioner, "we have reached a point where we can't talk about it to each other; we don't want to talk about it, and if we do talk about it, we have rather harsh words on the subject."

The experience of the past few years demonstrates that placing greater emphasis on termination than on development impairs Indian morale and produces a hostile or apathetic response which greatly limits the effectiveness of the Federal Indian program. The task force believes it is wiser to assist the Indians to advance socially, economically, and politically to the point where special services to this group of Americans are no longer justified. Then, termination can be achieved with maximum benefit for all concerned. Furthermore, if development, rather than termination, is emphasized during the transitional period, Indian cooperation—an essential ingredient of a successful program—can be expected.

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[3] *Indian Affairs Manual*, vol. 1.

It is for the above reasons that the task force prefers not to list termination *per se* as a major objective of the Federal Indian program.

On the other hand, members of the task force believe that wherever the availability of special Federal services for Indians occasions resentment among their neighbors and results in discrimination, and wherever State and local governments use the Federal relationship with Indians as an excuse for denying Indians equal treatment with other citizens, a sympathetic effort should be made to develop programs which will meet their needs without placing Indians in a special category. In this respect such legislation as the Social Security Act, the area redevelopment bill, and Public Laws 815 and 874 (81st Congress)—all of which treat Indian and non-Indian needs on the same basis—is highly desirable.

Finally, the task force believes that eligibility for special Federal services should be withdrawn from Indians with substantial incomes and superior educational experience, who are as competent as most non-Indians to look after their own affairs. Furthermore, Indians should not receive federally administered services which duplicate State and local benefits to which they are entitled as citizens of the States, counties, and communities in which they reside.

In concluding its remarks concerning objectives, the task force acknowledges the wisdom of basing future policies and programs of the Bureau of Indian Affairs on the first two aims listed above.[4] However, it wishes to restate the first of these, in order to emphasize the importance of helping Indians achieve and adjustment which will be contributory, rather than passive. Membership in a society imposes obligations as well as bestows privileges. Assisting Indians to recognize and fulfill their obligations is as important as helping them to take advantage of their privileges and must be an essential part of the Federal program if it is to benefit both the Indians and the United States.

In the opinion of the task force, the Bureau of Indian Affairs should seek attainment of the following related objectives:

1. Maximum Indian economic self-sufficiency.
2. Full participation of Indians in American life.
3. Equal citizenship privileges and responsibilities for Indians.

The task force strongly emphasizes that the aid of the tribe—or, more properly, the Indian community—is crucial to the achievement of these objectives and this support should be secured before projects are commenced. The Indians can retain their tribal identities and much of their culture while working toward a greater adjustment and, for the further enrichment of our society, it is in our best interests to encourage them to do so.

III. Organization

INTERDEPARTMENTAL RELATIONS

Having set forth the objectives of the Federal Government with respect to Indian affairs and having outlined improved programs to reach them, the task force now turns to organizational arrangements of the Department and its relationship to other departments in the Federal Government, to Indians, to the tribal governments, and to the internal structure of the Bureau of Indian Affairs.

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[4] As set forth in the *Indian Affairs Manual*, these "aims" are actually statements of programs, as well as objectives.

Over the years Indian affairs have been spread among Federal departments to a greater extent than is commonly realized. The Extension Services, with a few exceptions, are now supervised by the Department of Agriculture. Six years ago responsibility for Indian health was transferred from the Interior Department to the Department of Health, Education, and Welfare. In the coming year about one-fourth of the total Federal expenditure on behalf of Indians will be disbursed by the Indian Health Division of the Public Health Service. Additional sums appropriated to the Department of Health, Education, and Welfare will be used for the benefit of Indians and others under programs of Federal aid to education such as Public Laws 815 and 874.

This distribution of functions raises serious questions of uniformity in such administrative areas as budgeting, program planning, coordination of eligibility standards, and relationships with the State governments.

The task force recommends that an interdepartmental liaison committee be formed with representatives from the Departments of the Interior; Health, Education, and Welfare; Agriculture; and the Bureau of the Budget. This committee would meet regularly until uniform standards have been arrived at and program coordination has been achieved.

Advisory Board

In its hearings and on its travels, the task force found a general lack of understanding of the complexity of the Indian problem. No one organization speaks for all Indians. No one organization represents all the varied interest groups which are attempting to help the Government and the Indians find solutions to their problems. The Indians and their friends frequently find themselves pitted against other supecial interest groups concerned with mineral exploration and development, power, timber, grazing, and water. There has never been complete agreement as to the objectives and programs among those concerned with Indian affairs and the lack of it has made it difficult for the Department to fulfill its mission.

From 1869 until 1933 the Secretary of the Inerior was assisted in the performance of his duties by a Board of Indian Commissioners, set up by statute, appointed by the President, and provided with modest appropriations. Many of the witnesses in the task force hearings urged that a board of advisers or commissioners again be created, with the objective of aiding the Secretary, improving administration, and broadening representation.

The task force does not favor the reestablishment of the Board of Indian Commissioners at this time. This board was created because of scandalous practices by Indian agents in the purchase of supplies. The modern Bureau of Indian Affairs with its system of inspection and audits and its programs of technical assistance bears little resemblance to the Bureau of a century ago.

On the other hand, other Government agencies, including some in the Department of the Interior—such as the National Park Service—have found it helpful to be guided in their activities by an advisory board with stautory authority and an appropriation. About 1950 the Bureau of Indian Affairs had such an advisory board, based upon secretarial rather than statute authority. However, it has not had such a board in the intervening years and does not have one at the present time.

The task force thinks the Department needs to improve public understanding of Indian affairs and that this can be partialy accomplished through more citizen participation in Indian affairs at the highest level. In addition, the Bureau of Indian Affairs can benefit from the advice of interested and public-spirited citizens, both Indian and non-Indian. Furthermore, continuous policy research such as that begun by this task force is needed in the normal evolution of the Bureau of Indian Affairs and the Department of the Interior.

The task force recommends that there be created by statute an Advisory Board to the Secretary of the Interior, to consist of 15 persons (both Indian and non-Indian), who are broadly representative of the spectrum of interest in Indian affairs. Members of the Board should not receive a salary, but should be provided reimbursement for expenses. One of the principal functions of the Advisory Board should be to evaluate policy research in the field of Indian affairs, which can originate in the Department or can come from private sources, such as foundations.

BUREAU OF INDIAN AFFAIRS

Operating under delegations of authority from the Secretary of the Interior, the Bureau of Indian Affairs is one of the oldest units in the Federal Government. It antedates the Department itself and is steeped in custom and tradition. It is an honorable service, but it also is an ancient one. It has been studied repeatedly, most recently by the Bimson group in 1953, and a few years previously by the management firm Booz, Allen & Hamilton.

The task force does not consider its assignment with respect to the Bureau to be primarily that of reorganizing the Bureau structure, but rather to state objectives and examine programs in order to determine whether the Bureau as currently organized is a suitable instrument for effectuating them.

Present structure and problems

Since the Bimson report, the Bureau has been organized on a three-level, three-line basis. The central office in Washington with about 300 employees is responsible for overall direction, planning and programing, coordination, inspection, and evaluation. The intermediate level consisting of 10 area offices has broad delegations of authority as well as supervisory responsibility over the field installations. Direct services to Indians are provided through 500 large and small field installations, which are headed by some 42 superintendents. Typical installations include reservations, schools, area field offices, subagencies, and relocation offices. The bulk of the Bureau's 11,600 employees are in the field, with almost half of them engaged in providing educational services.

This three-layered structure is vertically segmented by an equal number of program divisions based on the functions of administration, community services, and resource management. An assistant commissioner heads each of the latter. In general, similar divisions are found in the area offices and the field installations.

From testimony presented during its hearings the task force learned of general dissatisfaction with the slow rate at which the Bureau performs its abundant paperwork. Items initiated in the field often must move through a network of reviews and appeals all the way to the Secretary's office with numerous side trips to specialists and solicitors. The task force feels that when new policies have been laid down by the Secretary, programs adopted, and a commissioner installed, further study of the Bureau structure and manual may be called for. While we cannot predict the outcome of such a study, we can indicate two characteristics of the Bureau's structure which inevitably produce administrative delay and poor communications between the field and central office.

The first of these is the different organizational basis for the field and central offices which has been mentioned previously. In the field installations and area offices, the Bureau is primarily organized on a geographic basis, whereas the central office is organized solely on a functional basis.

The other factor which causes delay and a breakdown in communications is the substantial internal layering of the Department, which complicates the route by which matters reach the Commissioner and the Secretary for decision. The Deputy and Assistant Commissioners, the Assistant Secretary and members of his staff, as well as various persons in the Solicitor's Office and the Secretariat, must often become involved before the Commissioner and the Secretary make a final decision. In similar situations, large businesses have generally found it necessary to create an operating committee composed of those whose duties are closely associated with the principal executive officer. The members of such a committee (including the legal staff) hold daily meetings and with all present in the same room at the same time, can greatly speed up the flow of paperwork and improve communications which are vital to decisionmaking. It is highly desirable that the Secretary, Assistant Secretary, and Commissioner of Indian Affairs examine the potential effectiveness of this management instrument.

Economic development

Elsewhere the task force has recommended a program of economic development. This program will require some organizational changes and rearrangement of branches. Because it depends upon programs and policies yet to be determined, the task force will not comment in detail on these. However, it does wish to point out the advisability of reconstituting the Division of Economic Development in the central office. From other divisions where they are now located, the branches of credit, industrial development, and vocational placement and training should be transferred to this division. We believe also that extension work, now supervised by the Department of Agriculture, should be returned to the Bureau and located in this division.

In addition to the functions provided by these branches, new functions will undoubtedly need to be provided either by the transfer of personnel from existing branches or by the creation of new units. Among the important activities which ought to be conducted by the Division of Economic Development are the following:

Research and analysis.—A first step toward economic development is the preparation of reservation inventories. All reservations should have such inventories as a basis for sound planning.

Community planning and development.—Successful economic and industrial development requires a favorable community atmosphere as well as orderly provision of facilities. For example, haphazard location of buildings is not conducive to industrial or community development.

Recreation development.—Planning and feasibility studies making use of the National Park Service's experience could contribute materially to the promotion of tourism, and tribal recreation enterprises which take advantage of the scenery, hunting and fishing, and wilderness areas of Indian reservations.

Industrial contact.—Contact with industry, trade associations, professional organizations, chambers of commerce, and State development authorities is essential to the attraction of industry to the reservations.

On-the-job training.—Public Law 84–959 was designed to assist in developing jobs for Indians. Vocational placement in nearby communities can be helpful in the development of reservation economies.

Area offices

During the task force hearings and visits to the Indian country, the most frequently heard complaint about the administration of Indian affairs related to the area offices. Critics of the area offices seek their abolition on the ground that they interpose a barrier between the Indian and the Department in Washington and take away power and authority from the superintendent. Thus, these critics wish to return to the old relationship between the individual Indian and the superintendent on the one hand, and between the superintendent and the Commissioner on the other.

The task force has come to understand the reasons for these complaints. They express a sense of frustration and disappointment based on the failure of many Bureau programs to yield effective results. Nevertheless, the frontier days are gone, and, with them, the time when the agency superintendent was the sole local representative of the power and authority of the Federal Government. The needs of the reservations are changing, and the local Indian leaders, in most cases, are ready for swift economic and cultural advances. In modern times and under modern conditions, abolition of the area offices would be impractical. The Bureau itself is a vast organization, and a one-to-one relationship between the Commissioner and 42 superintendents contradicts principles of good management.

The area offices are intermediate command institutions which ought to be vested with broad delegations of authority. They should exercise supervisory powers over the superintendencies, but they should not seek to draw to themselves direct operating responsibilities which are better performed at the local level. This is not a situation which is peculiar to Indian affairs. Every Government agency with a central office, regional offices, and field installations has similar problems. The solution, in the opinion of the task force, lies in clear objectives, specific delegations of authority, and continuous communication between all the parties in interest.

The task force advocates maximum delegations of authority to the area offices with a clear understanding that to the fullest extent possible these delegations are to be passed on from the area office to superintendents. The role of the area office in providing technical services which cannot be practically provided at the superintendent's level ought to be clearly defined. Appeals should not be permitted to delay or to avoid difficult decisions.

At various times witnesses raised questions about the location of the area offices. The task force is inclined to agree that the location and jurisdiction of these offices are not always in accordance with principles of good management, but it feels that the present arrangement can be made to work. Among the possible changes which might be considered by the Commissioner, once policies and programs have been determined by the Secretary, are the following:

1. The area director for eastern Oklaohma is also the superintendent of the Five Civilized Tribes. Western Oklahoma is a separate area. There does not appear to be sufficient difference between the two areas to justify two area offices. It would be more consistent if there were a single area office in Oklahoma City with general superintendencies elsewhere in Oklahoma as required.

2. The Minneapolis area office is smaller than any of the others and its activities have been reduced further by the termination of the Menominee Tribe. Duluth is considerably closer to the bulk of the groups to be served than the Twin Cities. It may be advantageous to transfer the office from Minneapolis to Duluth in an effort to improve services to the heavily populated northern reservations, which are in great need.

3. There are a number of small superintendencies in the Phoenix jurisdiction which are remote from Phoenix. The task force received complaints about some of them. For example, Owyhee, which is on the Nevada-Idaho border, is serviced from Phoenix. In terms of miles it is much nearer to Portland, and would appear to be more easily serviced from there.

4. Some years ago the Navajo jurisdiction was an area office in itself. In recent years it has been treated as a superintendency reporting to the Gallup area office. The Navajo repesent between one-fourth and one-fifth of all the Indians under Federal jurisdiction. It would seem much more appropriate to restore the Navajo Reservation to area status. Administration of Navajo affairs and the necessary close contact with the Navajo tribal government calls for an area director at Window Rock or Gallup with such superintendencies at various points on the large reservation as are deemed desirable.

If this plan is carried out, the other tribes within the present Gallup jurisdiction (Pueblos, Utes, and Jicarilla and Mescalero Apaches) would then constitute a separate area with a natural center of gravity at Albuquerque.

Superintendents

In the opinion of the task force the selection of superintendents is one of the major functions of the upper levels of the Bureau and the Department. The superintendent is a field agent who should have maximum on-the-spot decisionmaking authority. In the course of its hearings in and visits to the Indian country the task force was profoundly impressed by the caliber and dedication of many superintendents. These 42 men together with the 10 area directors are the truly indispensable part of the Indian service. Wherever the task force found an economic development plan in operation, increased job opportunities, improved housing, and lifted Indian morale, there was an outstanding superintendent working in harmony with effective tribal leaders.

On the other hand, in an organization as large as the Bureau of Indian Affairs, dealing with complex problems of human relations, there are bound to be some superintendents whose attitudes and actions arouse dislike, lack of confidence, and resistance among the Indians. The task force does not know whether a formal procedure can be found to identify in advance superintendents who can work well with Indians and those who cannot, but the difference in results is plainly visible on the reservations. Perhaps a prediction can best be made on the basis of previous success in working with Indians in other field positions.

The superintendent should demonstrate to the area office that he can handle authority before a full delegation is given to him. Only those who have demonstrated their ability to receive and carry out full authority and to work successfully with Indians ought to continue as superintendents.

We suggest that no man be placed in a superintendency without a period of in-service training. We also suggest that the practice, which seems to have been followed in many cases, of promoting to superintendencies technical or professional employees who have made good records in their special fields, is of doubtful validity.

Furthermore, when good superintendents are found, there should be a way to reward them in place, rather than move them to other jobs which are rated more highly because they spend more money or have more employees. The task force suggests that a superintendent at a small agency may actually have a more difficult task, and perhaps more acute problems, than the superintendent at a larger reservation with a correspondingly larger staff. We urge that the Bureau and the Department explore the possibilities of promoting superintendents in place. Furthermore, as in the Foreign Service, Bureau employees might be given ratings which they could carry with them from one assignment to another, thus providing more administrative flexibility. If the conclusion of the Department and of the Civil Service Commission is that legislation is needed, such legislation should be submitted to the Congress.

The task force found many differences in salary schedules and housing accommodations from reservation to reservation, and among employees of the Indian Health Division and the Bureau of Indian Affairs on the same reservations. In its judgment such differences adversely affect employee morale. The Bureau of Indian Affairs cannot be expected to become a real "Indian service" unless proper accommodations are provided, salary schedules are made more equitable, and contacts with other administrators in the same or related fields are systematically encouraged. With respect to the latter, it is pointed out that superintendents of other departmental bureaus with similar structures have annual conferences. The task force favors a similar meeting for superintendents in the Bureau of Indian Affairs.

Information office

Throughout this report, the task force has emphasized that achievement of the objective of full Indian participation in American life requires the collaboration of the Indians, the American people, and Government officials at all levels. Since at present many persons outside the Bureau view Indians and their problems in terms of stereotypes based on myths, anachronisms and deliberate distortions, there is serious need for a major public relations effort which will acquaint the American people with the Indian as he is today, with the history and present status of his problems, and with programs which the Federal Government and other agencies have instituted in his behalf.

Bureau employees everywhere should consider public relations one of the most important of their responsibilities. Superintendents and area directors, especially, should not only accept invitations to discuss their work, but should undertake to create opportunities for such discussion. Regular appearances before service clubs, chambers of commerce, and women's organizations should be a required part of the responsibility of all superintendents, area directors, and members of their staffs.

In its travels, the task force observed considerable variation from area to area in the kinds of information materials which were available for distribution to the public. In a few places, area office staffs had prepared small booklets summarizing pertinent data for each reservation and including small maps showing reservation locations. The task force found these extremely useful, but noted that the statistical information which they contained did not always agree with that included in publications prepared by the central office. Apparently, this calls for more coordination and constant updating of statistical materials.

It was something of a surprise to the task force to learn that the information office of the Bureau of Indian Affairs consists of only four persons, scarcely a sufficient number to handle the myriad responsibilities confronting it. In view of the great American interest in Indians and the vast quantity of misinformation circulated by other sources, the Bureau should have available at all times a large reservoir of books, pamphlets, photographs, color slides, motion pictures, recordings, and conceivably, video tapes, which could be utilized by Bureau personnel at all levels, by teachers, newspapers, radio and television stations, lecturers and others. Members of Congress could certainly find a use for such materials, both to circulate among their constituents and to employ for committee briefings. The availability of this information in a condensed, palatable form would be of great value in the Bureau's program for training new employees.

The task force was advised that certain Members of Congress are opposed to the idea of an expanded Bureau information effort because of their fear that it would be employed in the Bureau's behalf, rather than in behalf of the Indians and the Federal program. The Secretary should attempt to determine whether this is true and, if it is, confer with the Congressmen involved to get their suggestions as to how the necessary Bureau information activities (of which there are a great many) can be performed in some fashion which will not include this danger. If we are to enlist the aid of local agencies of Government, the non-Indians near the reservations, and the American public generally in helping solve Indian problems, it is absolutely crucial that all necessary steps be taken to inform these individuals and agencies concerning the nature of these problems.

If an adequate amount cannot be appropriated for a sound Bureau information program, then the Department should consider approaching some of the foundations which have given aid to the U.S. Information Agency, the National Park Service and other bureaus faced with similar problems. In fact, the USIA and the Bureau of Indian Affairs might work together in preparing some information materials, since there is almost as much interest in Indians outside the country as within.

The task force does not believe that the need for a strong information office in the Bureau of Indian Affairs can be overstated. The present arrangement is so grossly inadequate that it subjects the Bureau to much undeserved criticism from outsiders. In terms of staff, functions, and budget, this unit must be greatly strengthened or the Federal effort in behalf of Indians will continue to be msiunderstood by many upon whom the success of that effort depends.

As a postscript to these comments, the task force recommends that tribal councils be encouraged to develop information programs of their own. A few have done this with notable success. For example, one of the most useful films now available was produced by the Indians of the Fort Apache Reservation. If tribal governments can develop their own materials and make them available to the Bureau, the interests of both the Indians and the Federal Government will be better served.

THE SOLICITOR'S OFFICE

Legal matters for the Bureau of Indian Affairs are handled through the office of the Solicitor of the Department. Although representatives of this unit are located in the field, many items must be referred to the Central Office for decision. Numerous times during its hearings with Indians and others, the task force heard the latter procedure described as a "major bottleneck." This was especially true with respect to the approval of attorney's contracts. In a memorandum previously sent to the Secretary, the task force recommended that the procedure with respect to these contracts be reviewed, and consideration given to delegating approval authority to the field. At this time, we see no reason to amend our earlier recommendation and have been advised that it is now under discussion within the Department.

Since the Bureau's operations are far-reaching and often involve legal questions, the help of the Solicitor must frequently be sought. However, the task force believes that too many of the matters sent to the Solicitor require administrative, rather than legal, decisions. Furthermore, it believes that the Secretary should not, under any circumstances, permit the Bureau to avoid its responsibility by shifting decisionmaking to the legal staff.

We attempted to determine whether the present system of having the lawyers for the Bureau located in the Solicitor's Office is more efficient than the former system of having them under the administrative jurisdiction of the Commissioner. Opinion on the subject was so divided that we were unable to reach a satisfactory conclusion. In general, members of the Solicitor's staff supported the present system, whereas the Indians and some of the Bureau personnel indicated preference for the former system. Indians especially insisted that under the present arrangement their viewpoints are not given adequate attention, especially when the Bureau has a legal dispute with some other branch of the Department. The task force was unable to confirm this assertion.

The Secretary might wish to direct members of his immediate staff to conduct a study to determine whether the Bureau's legal work is being effectively handled under the present system.

FEDERAL-STATE RELATIONSHIPS

Any consideration of Federal-State relationships in the field of Indian affairs must begin with the basic legal doctrine that the Congress of the United States, under the Constitution, has plenary power over Indian tribes. The "commerce clause" of the Constitution, empowering the Congress to regulate commerce with the Indian tribes, provides a foundation for the vast structure of treaties, Federal laws, and judicial decisions affecting Indians. The corollary of this doctrine of plenary power is that the Congress has authority to repeal, abrogate or amend any of the treaties, even though these are called the supreme law of the land. It has been hard for some of the tribes to accept this conclusion. The taking of Indian land, as in the case of the Kinzua Dam, may be in direct violation of a promise in the treaty that the United States would not take Indian land until the Indians were ready and willing to surrender it. However, there is no question of the power of the Congress to take the land.

Most of the State enabling acts and State constitutions, in recognition of the Federal authority, contain a disclaimer over Indians and Indian lands, to the following effect: "said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States." Even the constitution of Alaska, the newest of the States, has such a provision.

In short, except as the Congress has transferred its authority to the States, the States have no jurisdiction over Indian reservations or Indians on the reservations. Indians away from the reservations, on the contrary, are subject to the State laws.

Congress has transferred some of its powers either by general statutes or by statutes applying to particular areas or tribes. Descent and distribution of Indian property traditionally have been governed by the laws or customs of the tribes. Congress, however, in the General Allotment Act of 1887 provided that allotments made thereunder should be probated "according to the laws of the State or territory where such land is located". The States power to act, nevertheless, is almost nil, for in the Probate Act of 1910 Congress gave the Secretary of the Interior the power to approve wills, determine heirs and partition allotments.

Other fields in which Congress has acted are health and education. State quarantine and sanitation regulations are applicable to Indian reservations under regulations prescribed by the Secretary of the Interior. State compulsory school attendance laws may also apply to Indians on reservations, but only if the council or other governing body of the tribe has adopted a resolution or ordinance giving consent to such application.

Another general statute is the Assimilative Crimes Act, which the Supreme Court has held is applicable to Indian country. The effect of that statute is to make criminal actions, as defined by State laws, subject to Federal prosecution if they are committed on lands under the exclusive jurisdiction of the United States, even though the acts are not crimes under Federal law.

Finally, the Act of August 15, 1953, popularly known as Public Law 280 (83d Congress), gave the consent of Congress to the assumption of jurisdiction over Indians to five named States: California, Minnesota, Nebraska, Oregon, and Wisconsin (with one reservation each excepted in Wisconsin and Minnesota). The act further gave the consent of Congress to any other State which, by legislation or constitutional amendment, wished to assume jurisdiction over Indians.

Over the passing years, especially since 1924, Federal-State relations affecting Indians have greatly changed. Historically, there is support for the contention of some of the States that Indians were exclusively a Federal responsibility. So long as the United States treated the tribes as sovereign, though dependent, nations, and negotiated and ratified treaties with them, there was little or no occasion to negotiate with the States about Indian matters. As a result of various special acts, many Indians had become citizens by the early 1920's. In the first World War reservation Indians generally were not subject to the draft, but hundreds of them volunteered and gave valiant service. Partly in acknowledgment of this record, Congress in 1924 declared all native-born Indians to be citizens of the United States. Forthwith, all Indians also became citizens of the States in which they reside, entitled to all the services and protections of other citizens.

Not all the States immediately accepted this changed situation. Even in the basic matter of voting rights, some of the States, on one pretext or another, denied Indians the right to vote. Not until 1948 did the last States, Arizona and New Mexico, give in as the result of decisions of the courts. Utah, for a brief period in 1956, refused to establish polling places on the reservation, but after the Indians carried their case to the Supreme Court, the legislature promptly repealed the old statute on which the State attorney-general had relied.

Education, welfare and relief, assistance under social security, law and order, hunting and fishing, and trespass are some of the fields in which the Bureau of Indian Affairs may deal with the States and their subdivisions. At the same time the points of contact with the States have been multiplying, other Federal agencies have taken over some of the Bureau's functions or have created new ones. The result has been not only that the Indians have lost much of their isolation, but that the Bureau, too, has had to deal with other Federal agencies and is no longer the sole Federal unit concerned with Indians.

Inevitably in such diffusion of functions there has been confusion and often injustice. With some exceptions, the general trend of State and local policy has been to resist or refuse to act, unless the Federal Government, through the Bureau or otherwise, makes a monetary contribution. Thus, under authority of the Johnson-O'Malley Act of 1934 the Bureau has been making payments to the States for the education of Indians in public schools. The theory under which such payments are made has shifted with the years, but basically the payments make possible services which the community or the State says it cannot afford to provide. One of the stock arguments is that Indians pay no taxes on their trust or restricted lands. This argument may have some validity in the States whose principal financial base is the tax on real property, but it is heard with equal vigor in States whose governmental functions are supported by State income taxes, sales taxes, excise taxes, licenses and fees, all of which are paid by Indians. The passage of Public Laws 815 and 874, with the subsequent amendment qualifying Indian trust or restricted lands as "federally impacted areas," has made possible the construction and operation of many public schools which would otherwise not have been available to Indians.

The status of Indians away from the reservations is frequently a cause of argument between the State and local governments on the one side and the Bureau on the other. Indians may be living away from the reservations, yet not have qualified under State laws or county and municipal ordinances, for assistance of various kinds given to other citizens. Such Indians may not have lost their rights as tribal members. They would be entitled to Bureau assistance if they returned to the reservation, but return may not be desirable. The whole problem of eligibility, whether for medical care, education, general assistance or relief, or any other service, is a vexing one.

It should be Bureau policy to work diligently and vigorously with States and their subdivisions, to the end that Indians off the reservations are treated as are all other citizens. In some areas this policy may require long and complicated negotiations. It may be that the Federal Government, insofar as it is responsible for reservation conditions which drive Indians away from home, should be willing to give some financial assistance when the impact of a large Indian colony creates distress in a community. The Bureau should not, however, give way in its contention that if the Indians meet the requirements established for citizens generally, they are legally entitled to receive the benefits and rights of citizenship.

Indian water rights [5]

Water rights under the laws of 17 Western States derive from the doctrine of "beneficial" use. In general, the principles which underlie this doctrine are that all the water in the State belongs to the people; that it may be assigned by the State from one user to another; and that the right to water is not a vested right appurtenant to the land, but an appropriative right subject to administrative regulation.

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[5] Grateful acknowledgment is made to the Honorable William A. Brophy, former Commissioner of Indian Affairs, who prepared at the request of the task force a memorandum from which this material is drawn. Statements made in this report, however, are those of the task force which assumes responsibility for them.

A clear statement of this basic proposition is illustrated by article 16 of the constitution of New Mexico which provides that "beneficial use shall be the basis, the measure, and the limit of the right to the use of water." Either the constitutions or the statutes of Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, and perhaps some other States as well, provide that the water in all rivers, streams, and other sources belongs to or is owned by the public or the State.

Other States in which water rights are of importance recognize the "riparian" doctrine which holds that the owner of land on the banks of a stream is entitled to the beneficial use of the water as it flows past. Riparian rights are repudiated in toto in Colorado, Arizona, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. The riparian doctrine is recognized in varying degrees in seven Western States, repudiated in the above eight, and is unclear in two.

Nonuse of water to which a right is asserted results in abandonment of the right under the State laws of Arizona, Idaho, Nevada, Oregon, Utah, New Mexico, and North and South Dakota.

In the 17 Western States where beneficial use is the basis of water law, the Indians are a minority which has been overwhelmed by stronger, more technologically advanced and more politically influential populations which have taken and used waters desired and claimed by the Indians. Since this has been permitted by States and most of the available water thus appropriated by non-Indians, it is too late for Indians to obtain water under State law.

In the light of the above, it is not surprising that Indians rely on doctrines of Federal law and litigation in the Federal courts for the assertion of their rights. By extensive litigation which has been carried repeatedly to the Supreme Court, it has been established that in creating Indian reservations, the United States intended for the Indians an amount of water sufficient to supply all the irrigable land within the reservation boundary, as well as to provide for associated domestic, stock, and related water uses. Reservation of this amount of water is implied and need not be expressly stated by treaty, statute, or executive order. It is a vested property right appurtenant to the Indian land. The priority of the right is the date the reservation was established. The existence of and the continuation of such right is not dependent upon actual use of the water at any given time; and it continues even though others may have taken and used the water after the reservation was created.

This view of Indian water rights, which has repeatedly been asserted by the Federal courts, is in conflict with the doctrine of water in the Western States and with the prevailing mood in water-short areas, particularly in times of severe drought like the present. It is also clear that most of the Indian water rights are based on Federal court interpretations which do not have much statutory implementation.

One example of the strategic importance of prevailing Indian water rights is the Navaho irrigation project. Now rapidly approaching the development stage, this project would have been impossible if section 9 of the Navaho-Hopi rehabilitation bill had been adopted in 1950. The intent of this section was to extend State civil and criminal jurisdiction to the Navaho Reservation. In spite of urgent Navaho needs and the importance of the total Navaho program, President Truman vetoed the bill. His principal reason was the fact that the Attorney General was unable to assure him that in the event of litigation over water rights, he would be successful in removing the case to the Federal courts where the doctrine of paramount Indian water rights would prevail. The Congress wisely removed the objectionable section and repassed the Navaho-Hopi bill, thus paving the way for the Navaho irrigation project and, incidentally, for other greatly enlarged Navaho programs which were unforeseen 11 years ago.

It has been asserted from time to time that Indian fears about the loss of water rights under State jurisdiction are groundless in view of the language in Public Law 83-280. This statute, which grants to the States the option of extending civil and criminal jurisdiction to Indian reservations, provides that nothing in the act shall "alienate" existing Indian water rights. The amount of protection which this statute provides is uncertain, since it does not specify what the existing Indian water rights are. Indians fear that if disputes over these rights were litigated in State courts, the doctrine of beneficial use would decide the issue. In such cases their only recourse would be prolonged and costly litigation in the Federal courts.

It is not suggested that Indian land should remain undeveloped. On the contrary, Indians should use their water rights to the fullest extent. To do so would provide a source of income and, at the same time, would be a practical protection of their rights.

In the opinion of the task force it would be improvident to remove Federal jurisdiction over Indian water rights until the irrigable acreage of a given reservation has been determined; until the quantity of water needed and its priority have been definitely fixed; and until Federal laws giving ironclad protection against losses have been enacted.

Because Indian water rights are definite in the decisions of the Federal courts but uncertain in their workaday application, the Bureau of Indian Affairs bears a heavy responsibility to be at all times a vigorous defender and developer of what is perhaps the most valuable of all Indians assets. In line with this philosophy, pending Indian irrigation projects should be completed as rapidly as staff and appropriations permit.

TRIBAL GOVERNMENTS

A majority of the recognized Indian tribes of the United States have some kind of governing body, and about 70 percent have had their tribal governments formalized under provisions of the Indian Reorganization Act of 1934. These political units vary widely in size and complexity. At one end of the scale is the Navaho tribal government which in expenditures, personnel and diversity of functions surpasses many county governments. At the other end are the governing bodies of small tribes in the Great Basin, the Pacific Northwest and the Great Lakes areas which have only a handful of elected officials, no tribal budgets and very little authority.

Just as they have formalized their governments, many of these tribes have availed themselves of the opportunity under I.R.A. legislation to incorporate for business purposes. In most cases, business and political activities are carried on by the same tribal officials and administrative expenses are met by tribal business enterprises rather than by taxation.

In addition to varying greatly in size and complexity, tribal governing bodies differ markedly among themselves in their efficiency and responsiveness to the will of the electorate. A specific complaint against tribal governments which the task force heard from both Indians and non-Indians is that many tribes either have no constitutional directives to extend the guarantees of the Bill of Rights and the 14th amendment to those within their jurisdictions, or, if they have them, they ignore them. This matter has been alluded to, and a recommendation offered, in the section of the present report dealing with law and order.

From comments which they heard everywhere—in Indian country as well as in Washington—the task force gained the impression that some of the tribal governments are plagued by nepotism, autocracy, and a chronic shortage of funds. However, we do not feel this observation constitutes grounds for attacking the existence of tribal governments. As a matter of fact, the most successful Bureau programs were invariably found to be operating on reservations which had sound governing bodies composed of dedicated and able leaders. Improvement is needed in existing governments, an accomplishment which will almost certainly require the sympathetic help of the Secretary of the Interior if it is to be provided quickly and effectively.

The task force strongly recommends that the responsible unit of the Bureau of Indian Affairs begin an immediate review of the constitutions of Indian tribes to determine the most significant deficiencies in these documents and make recommendations to the tribes for overcoming them. Such matters as civil rights, adequate election machinery, and accounting procedures should be given special attention.

One suggestion which the Department can make immediately to tribal officials is that they take greater advantage of their taxing authority. In this fashion, they can secure additional revenue for running their governments and, at the same time, acquaint their members with one of the more important responsibilities of citizenship in a democracy. In its travels, the task force learned of one Southwestern tribe which has scarcely enough funds to pay the small salary of its chairman, yet which allows several prosperous Indian cattlemen to pasture their herds on tribally owned land without paying any grazing fees. So long as a tribe refuses to use its own assets for helping its members, it can anticipate congressional reluctance to appropriate money in its behalf.

It may be assumed that as reservation resources are developed and individual incomes and property holdings increase, taxation can provide a basic source of revenue for operating reservation governments. This will make it easier to separate the business and political functions now jointly exercised by tribal governing bodies. At present, this dual responsibility is a factor which hinders many reservations from becoming politically integrated with the States and counties of which they form part.

The task force points out that some of the present programs of the Bureau of Indian Affairs give little encouragement to talented Indian youngsters to settle on the reservation when they finish their formal education. Consequently, many of the most able leaders are being lost to their communities. In all its programs dealing with young people, the Bureau should point out the challenges which tribal governments and tribal enterprises offer to Indian youth with the courage and abilities to face up to them. In this regard, it can follow the example of the Navajos who have made training for reservation leadership a basic part of their educational program.

ALASKA

Because of the limited traveltime available to it, the task force was not able to include Alaska in its itinerary. Consequently, those few comments which follow are based only on interviews with Bureau personnel—including the Juneau area director—and information from questionnaires circulated among the residents of 20 Alaskan Native villages and organizations. Because of its location, its pattern of settlement, and its traditional and actual relationship with the Federal Government, Alaska requires a separate, detailed study and we recommend that such investigation be undertaken as soon as possible.

From its limited exposure to the Alaska situation, the task force feels the following items should be given special consideration both in future studies and in immediate policy decisions affecting the Indians, Aleuts, and Eskimos of Alaska:

1. A main concern of all native groups is the lack of year-round employment. Fishing and trapping are seasonal occupations at best, and in recent years have not been adequate to support the family. One village reported that during the winter months 75 percent of its people were on direct relief. Another village, in the west, reported that only 13 of its working force of 150 were regularly employed. In southeast Alaska, where the economy is based almost solely on salmon packing, the continuing declines in the salmon runs have caused heavy losses, not only to the Indian-owned canneries, but to the canning industry as a whole. The community-owned canneries are heavily in debt. They have been financed through the revolving loan fund. Careful management and improvement in the fish runs are needed if the industry is to return to prosperity. The task force suggests that the Bureau add to its Alaska staff at least one person who is experienced in the fish canning business. Such a man would provide technical help to the managers of the several canneries, and would in effect be a general supervisor or manager.

Various suggestions have been made to bring about improvement in economic conditions among the Native groups. Projects which would provide employment and also benefit the communities include roads, flood control, sanitation, tourist attractions, and resource development. Some communities have, or are close to, mineral resources, especially coal and gold. Except for the large loans to the community canneries and stores, which were initiated more than 10 years ago, little money has been available for loans in Alaska. Recent loans have been limited almost exclusively to owners of fishing boats. If the revolving loan fund is enlarged by the Congress, credit activities in Alaska should be expanded.

In contrast with the canneries, the community-owned Native stores have been notably successful. Many of these were started before the revolving loan fund was established, but loans from the fund have given most of them a sound base, and also made possible the organization of "ANICA" (Alaska, Native Industries Cooperative Association), through which the stores sell furs, ivory, baskets, and other Native products, and buy groceries and other supplies to sell in the villages. The stores and ANICA are nonprofit organizations which have helped to raise the standard of living in the villages. They assist individuals to sell their products at fair prices; they keep down the prices of staples which they sell, and they afford incidental opportunity for training in business.

A handicap to economic development is the uncertainty about the ownership of the lands which the Natives use and claim. The Congress has reserved to itself the resolution of this issue and many bills to settle the Native claims have been introduced. None has come close to passage despite the fact that nearly a century has gone by since the purchase of Alaska from Russia. In recent years the land claims bills have been pushed aside in the drive for statehood. Now that Alaska is a State, the Department should renew its efforts to obtain satisfactory legislation. The Natives in all areas are deeply concerned that the lands which they believe to be theirs will be taken by the State through authority in the enabling act which permits it to select more than a hundred million acres of Federal land.

2. Despite recent spectacular decreases in the incidence of tuberculosis, medical care presents many problems, due largely to the dispersal of the population and to the long distances between villages. It is difficult for doctors and nurses to cover all the ground. One village, 100 miles from the nearest hospital, reports that a doctor visits the village "on the average" once in 2 years.

3. By agreement with the State the Bureau no longer operates schools in these communities which have public schools. The Bureau maintains schools in many of the native villages, most of which are too small to justify more than a grade school. Parents are faced with a dilemma—they want their children to go to high school, but they do not want them to go to boarding schools as far away as Wrangell, Mount Edgecumbe, and Chemawa in Oregon. Usually these boarding pupils are away from their families for the whole of the school year. Suggestions have been made that several high schools be built "nearer home," perhaps at Bethel, or at some point on the Seward Peninsula. There has also been talk about a system of regional high schools which would be open to all qualified children in the area.

4. Currently a vexing problem results from the efforts of Federal officials to enforce the provisions of the Migratory Bird Treaty in areas where hunting and fishing out of season have been common practice because game and fish are necessary items in the diet of these people. Article II of the Treaty of 1916 (39 Stat. 1702) provides a closed season for migratory game birds between March 10 and September 1. The treaty permits Eskimos and Indians to take at any season certain named nongame birds and their eggs for food and their skins for clothing. It seems that the treaty should be modified to permit the taking of game birds as well as nongame birds for subsistence.

5. Attention should also be given to the desirability of expanding the reindeer herds. Many of the community herds which were established in the 1930's have disappeared, but some flourishing units are still owned by individuals, and they are important in the village economy. The owners are provided help from their neighbors in herding, rounding up and slaughtering, and in return give parts of the carcasses, including the hides, to needy members of the community.

IV. Concluding Statement

Longer than any other agency of the Federal Government, the Bureau of Indian Affairs has carried out directives to arbitrate cultural differences between the American society and one of its segments. As it is the fate of arbiters seldom to please everyone and often to please no one completely, the Bureau throughout its history has been under constant attack from some quarters and, occasionally, has been criticized from all sides at once. The need for its very existence has been continuously challenged by those who feel that differences should be arbitrated "naturally" through the processes of conflict and competition, rather than "artificially" through Government intervention.

Yet, in spite of the many difficulties which the Bureau has encountered in discharging its often conflicting directives, the assistance which it and other agencies have provided to the Indians has made it possible for this group of Americans to progress toward fuller and more effective participation in the social, cultural, political, and esthetic life of the United States. A greater percentage of the Indians today vote, seek elective office, attend school, enjoy good health, have attained prominennce in the arts, and are socially accepted by their non-Indian neighbors than at any other time in the Nation's history. On the other hand, the number of Indians for whom these changes have not taken place is still large, is increasing rapidly, and presents a continuing challenge.

Much of the progress which the Indians have made has occurred during the past 40 years. They have been considered citizens only since 1924 and, in Arizona and New Mexico, their right to vote was not confirmed in the courts until 1948. Statutory authority for the organization of tribal governments was provided by Congress just a little over 25 years ago, and Indian youth have been drafted for military service only since World War II.

The events of these past 40 years have done much to make Indians aware of the fact that they cannot alone decide the kind of future world they will inhabit. Furthermore, their experiences have shown them new ways of making their lives more secure and confortable. Now, the desire of many for better incomes, more formal education, better health, and more voice in their own affairs rivals their desire to retain older ways.

The Task Force believes that in the foreseeable future, the proper role of the Federal Government is to help Indians find their way along a new trail; one which leads to equal citizenship, maximum self-sufficiency, and full participation in American life. In discharging this role, it must seek to make available to Indians a greater range of alternatives which are compatible with the American system, and where necessary, to assist Indians with choosing from among these alternatives. As a part of this responsibility, it must mobilize and direct the vast reservoir of good will toward Indians which is found throughout the country. Finally, since many of the problems relating to Indian development are local problems, it must use its influence relating to Indians reservations, to recognize their stake in the Indian future and to work with the Indians and with the Federal Government in preparing the new trail.

This report was compiled by the Secretary's Task Force on Indian Affairs:

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Philleo Nash,
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F. A Free Choice Program for American Indians

(Report of the President's Task Force on American Indians (excerpts), December 1966)

V. ORGANIZATION

A. ISSUES

The task force believes that the organizational arrangements within the Federal Government for managing programs for Indians should be such as to maximize (1) the possibility of recruiting highly qualified and strongly motivated personnel, particularly for key leadership roles; (2) the probability of securing adequate appropriations for Indian programs; (3) the capability to coordinate effectively the programs of all Federal agencies which can significantly affect the economic and social life of the Indians; and (4) the development of positive attitudes by Indian tribes toward Federal programs and their own future.

The key issues are the following:

1. Departmental responsibility

Should primary responsibility for Indian affairs continue to rest with the Secretary of Interior or should it be transferred to the Secretary of Health, Education, and Welfare?

2. Should most major operational responsibilities continue to be the responsibility primarily of one agency?

In the second session of the 89th Congress, the issue was raised sharply by Senators Morse and Fannin of the Senate Education Subcommittee. In connection with the amendment to title I of Public Law 89-10, which authorizes use of title I funds for projects in BIA-operated schools, they requested the Secretaries of HEW and Interior to examine the desirability of transferring the responsibility for operating the BIA schools from BIA to the U.S. Office of Education and to report to the committee early in 1967.

Similar questions conceivably could be raised for other functions such as vocational training and welfare.

Another aspect of this issue deals with the problem of interagency coordination. Even under current arrangements, there is no formal mechanism for effecting interagency coordination. Indeed, it is well nigh impossible to get accurate and complete information from all agencies with programs having actual or potential impact on Indians, even after the fact. Coordinating future program plans is now impossible. Some kind of formal mechanism seems to be essential.

3. *Status in the departmental hierarchy*

At the present time, the Indian affairs organization is a Bureau with the Commissioner reporting to the Assistant Secretary for Land Management. Should it be raised in status?

4. *Indian attitudes: relationship to "termination"*

Organizational questions are deeply related in the minds of the Indians to the underlying issue of "termination." The last major organizational change—the transfer of the Division of Indian Health to HEW—took place during a period when "termination" was the publicly announced policy of both the executive and legislative branches. Although this policy was abandoned by the executive branch more than 5 years ago, it continues to lurk just below the surface in Congress. Indians undoubtedly will remain apprehensive that this sentiment lies behind any move to change current organizational arrangements.

5. *Congressional attitudes*

Obviously, the attitudes toward organizational change of the several cognizant congressional committees are important. These attitudes do not appear to be sharply polarized at the moment, but they are likely to be affected both by the substance of any proposed change and by the way it is presented.

B. RECOMMENDATIONS

The task force [1] recommends that:

1. Primary responsibility for Indian affairs be transferred from the Secretary of Interior to the Secretary of Health, Education, and Welfare;

2. All of the functions and personnel currently assigned to the Bureau of Indian Affairs should be transferred to a single new agency in HEW (which might be named the Indian Affairs Administration); its head should report to the Secretary; in studying the structure and functions of this new agency, the possibility of transferring the Division of Indian Health into it should be considered seriously;

3. An Interagency Committee on Indian Affairs should be established by Executive order; this committee should be chaired by the Commissioner for Indian Affairs and should have appropriate terms of reference to make it possible to achieve real coordination of Federal policies and programs affecting Indians.

4. An Indian Affairs Advisory Committee, appointed by the Secretary, and consisting of 12 members, at least half of whom should be Indians resident on reservations, should be established. It should meet at least two times a year to advise the Commissioner and the Secretary on broad policy and program questions.

5. The decision on organizational changes should not be disclosed until such time as the decisions on the whole program have been made and have been discussed with key Indian and congressional leaders.

6. The actual transfer should be effected only after a careful study has been completed to serve as the basis for a detailed plan for making the transfer without disrupting on-going programs; if at all possible, HEW should be responsible for the fiscal year 1969 budget for Indian affairs.

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[1] Messrs. Keeler and Douglas do not concur in the first two recommendations.

C. DISCUSSION

1. Background

The Bureau of Indian Affairs has been in the Department of Interior since 1849, the year the Department was established. (It was previously in the War Department.) Until 1955, the Bureau was responsible for providing all Federal services to Indians. In 1955 the responsibility for providing health services was transferred to the Public Health Service where it currently rests. (However, the appropriation for the Division of Indian Health is not reviewed by the subcommittees responsible for the Public Health Service appropriation; it is considered by those responsible for the Bureau of Indian Affairs appropriation.)

In fiscal year 1966, the Bureau of Indiang Affairs had an employment ceiling of 15,951 and an appropriation of $207.6 million. All but 300 of the Bureau's staff are located in the field. As can be seen from the attached table, over 9,000 people and $109 million—that is, 57 percent of the people and 53 percent of the budget—were required for the education function. In the same year, the Division of Indian Health employed 5,740 people and had an appropriation of $81.3 million. Thus, two-thirds of the people and two-thirds of the funds are required to provide education and health services to Indians. If welfare, guidance, relocation and vocational training services are added, three-quarters of the aggregate appropriation for Indians is allocated to health, education and welfare functions.

BUREAU OF INDIAN AFFAIRS, APPROPRIATIONS AND EMPLOYMENT

	Appropriations (in millions)			1966 employment
	1956	1961	1966	
Education:				
Operation	39.0	55.5	87.0	9,116
Construction	5.0	12.0	22.0	
Welfare and guidance	3.8	6.9	13.5	383
Law and order	.4	1.3	2.9	276
Road:				
Maintenance	2.3	2.8	3.8	388
Construction	4.7	9.5	17.5	970
Relocation and vocational training	7.0	6.5	14.5	471
Management and development of trust property	8.4	14.0	17.8	1,688
Agricultural extension	.9	1.2	1.8	55
Credit assistance	.4	.3	1.6	141
Tribal operations and res. programs	.3	.7	2.9	226
Irrigation: construction and operation	3.7	4.7	13.3	834
Construction and maintenance of buildings	.8	1.6	2.8	398
Industrial development			.7	50
Housing development			.8	95
General administration and other	2.7	4.0	4.7	960
Total	74.4	121.0	207.6	16,051
DIVISION OF INDIAN HEALTH, HEW				
Medical Care:				
Operation	33.8	49.7	67.2	5,740
Construction	5.0	9.7	14.1	
Total	38.8	59.4	81.3	5,740

In addition to these appropriations, in the past few years several other agencies have initiated significant programs affecting Indians. The Office of Economic Opportunity and affiliated agencies obligated $31.9 million in fiscal year 1966 for projects benefiting about 100 tribes in 23 States. The Housing Assistance Administration has provided $17 million for public housing—both for low rent and mutual self-help—

on Indian reservations in fiscal years 1964 through 1966. The Economic Development Administration made available $2.3 million in fiscal year 1966. The Office of Education provides funds to the public schools in which 100,000 Indian children are being educated, but data are not available on the amounts benefiting Indians from their various programs—particularly under Public Laws 874 and 815 (Federal impact areas) and Public Law 89–10 (the Elementary and Secondary Education Act). The total undoubtedly is significant, but current recordkeeping practices apparently make it impossible for the Office of Education to supply these data.

Early in its deliberations, the task force was deeply impressed by:

(*a*) *The lack of socioeconomic data from Indians.*—Considering continuity of responsibility for so many years and the extraordinary complexity of the problems for which the Bureau of Indian Affairs has been responsible, the discovery that such data were not available came as a real shock to the task force. The Bureau has no really hard data on population dynamics, income, employment, education, etc. It has few benchmarks against which to measure progress, and more importantly, grossly inadequate data on which to base development plans. The Bureau does not even have one trained statistician on its staff at the present time.

Acquiring this kind of data systematically requires, first of all, an appreciation of its significance—which, apparently, has been absent both in the Bureau and in the Department of Interior—and, secondly, a willingness to budget the funds to acquire and analyze it.

The task force made no systematic effort to explore in depth the reasons for this extraordinary circumstance but it was informed that (1) the Bureau has been so accustomed to operating without such data (its leadership has, for the most part, been drawn from within its own ranks) that it has never really pressed very hard for resources to acquire such data, and (2) when it did so on several occasions, the fund requests were denied in the Department of Interior budget review process and never ever reached the Bureau of the Budget.

(*b*) *The total lack of research.*—A related matter, equally shocking to the task force, was the total absence of any R. & D. funds in the BIA budget. Apparently, the same set of attitudes and circumstances, both within BIA and the Department of Interior, account for this.

(*c*) *The absence of consultants.*—The Department of Interior and the BIA apparently were untroubled by their lack of access to consultants. Interior's departmental appropriation bill restricts total annual expenditures for consultants to $200,000 (slightly over one-tenth of 1 percent of its $1.5 billion budget). BIA, which accounts for 15 percent of the Interior Department's total budget, is allocated $6,500 for consultants, or about 3 percent of the consultant funds. Not surprisingly, the BIA makes very little use of consultants. (By way of contrast, HEW had $5,572,000 allocated for consultants in fiscal year 1967, 27 times the amount of Interior's allocation, although its budget is only 10 times greater than Interior's.)

(*d*) *The organizational status and location of the Bureau.*—The Commissioner of the Bureau of Indian Affairs reports to the Assistant Secretary for Land Development. The task force noted that the central concern of the Bureau of Indian Affairs today is *human* resource development, not land management. It was only a few months ago, in mid-1966, that the educational function was elevated in status from a branch to a division—this despite the fact that over half the BIA staff and half its budget are devoted to education.

(*e*) *The personnel problem of BIA.*—The task force is impressed that recruiting high-quality professional personnel for BIA is a very difficult task. Living in remote areas, far from the prerequisites of urban civilization, is not very attractive to many highly qualified people who might otherwise be interested in the jobs. Consequently, the tendency for the BIA to develop highly inbred behavior patterns, to assign and promote its career personnel who are willing to live in remote areas irrespective of their professional competence is quite understandable. The task force did not explore this issue, but it did hear that too many BIA employees were simply time-servers of mediocre or poor competence who remained indefinitely because they were willing to serve in unattractive posts at low rates of pay for long periods of time; that too many had unconsciously anti-Indian attitudes; they are convinced the Indians are really hopelessly incompetent and their behavior reflects this assumption. The task force is not in a position to make a definitive judgment in this area—though it has been informed that considerable improvements have taken place in the last 5 years. An emphasis on recruiting competent professionals and on inservice training seems to be badly needed.

2. Specific reasons for recommendations

(*a*) The transfer of overall responsibility for Indian affairs to HEW would place executive branch responsibility in the Department best equipped to develop effective programs to meet the needs of the Indian people, because it is the Department responsible for related programs for the general public. HEW programs emphasize human development as contrasted with Interior's program emphasis on conservation and natural resources. (The transfer, last year, of the water pollution responsibility from HEW to Interior was clearly consistent with this recommendation.)

The Indian Affairs functions consist of two types of activity: (1) Providing to Indians on reservations most of the services the rest of the population receives from State or local governments; and (2) serving as trustee in matters subject to Federal trusteeship authority.

The major services in the former category are in the area of education, health, welfare, and resource management. The first three of these services account for 75 percent of the BIA budget. They clearly are activities which can obtain stronger policy and technical support in HEW than they can in Interior.

While the trusteeship category is associated primarily with land management, by and large, BIA carries out its responsibilities largely independent of other Interior agencies. (Many of the activities, for example, involve the welfare staff of BIA and the Department's legal staff on such matters as settlement of estates, guardianship of minors and incompetents with respect to income from any source, assistance in family budget planning and other personal counseling of adult Indians.) BIA relies on the Geological Survey to advise on mineral leasing and to supervise oil and gas production on Indian lands, and it relies on other Interior agencies, such as the land records staff of the Bureau of Land Management to provide the same services they would to any other agency or to the general public. There is no reason why these services cannot continue to be provided by the same agencies in the same way if BIA were to be transferred to HEW.

BIA now has extensive working relationships with HEW agencies and the transfer to HEW would ease the extensive problem of interagency coordination. Necessary coordination in the land and resource management agencies in less extensive and significant than that required in the areas of health, education, and welfare.

BIA also maintains continuous relationships with State education and welfare agencies whose primary Federal relationships are with HEW. The character of Indian welfare problems, frequently involving complex policies related to eligibility for assistance, has raised serious problems in Federal, State, and local relationships. HEW, because of its close working relations with State education and welfare agencies, could be of great assistance in facilitating improved intergovernmental relations in the area of Indian affairs.

The task force does not believe the transfer would be inconsistent with its major recommendations for strengthening the economic base of Indians on reservations. BIA is now virtually a self-sufficient, independent agency in Interior. The major task force recommendation in the area of economic development would create a new, independent institution (an Indian National Development Corp.) to provide financing, technical assistance, and other services to promote economic development on reservations. This entity could relate to BIA (or its successor) regardless of the department in which it is located.

The departmental constraints in Interior on such matters as personnel grades, use of consultants, and R. & D. funds are more severe than they would be in HEW. Higher grades to recruit topflight professional leadership, liberal use of consultants to help design new programs and more effective ways of doing things, and emphasis on research are all necessary if real progress is to be made. The prospect for acquiring this type of support seems brighter in HEW than in Interior.

Finally, there is an important psychological advantage to starting a new program for Indians in a new agency that to some extent might be able to divest itself of the BIA reputation for paternalism.

(*b*) The task force feels strongly that the Indians should continue to look to a single Federal agency for help in solving their problems. It strongly opposes distribution of such BIA operating functions as education and welfare to the agencies in HEW now responsible for administering Federal grant programs in these areas. The transfer from Interior to HEW should preserve and strengthen the concept of a single agency responsible for operating most Federal programs relating to Indians, and for assisting Indians in their dealings with other Government agencies. Indeed, the desirability of transferring the Division of Indian Health into the proposed Indian Affairs Administration should be seriously considered.

The task force view on this issue stems from two judgments. First, the relationships of the various programs now being conducted by the BIA are such that overall program effectiveness is likely to be diminished if responsibility for their conduct were to be decentralized. Second, a move to decentralize would be vigorously opposed by the Indians as a sure sign that "termination" was a goal.

There is one major exception to this position: the function of stimulating on-reservation employment by economic development programs should be moved. The task force, as explained elsewhere in this report, believes that a special instrumentality is required to discharge this function effectively.

(*c*) The reasons for recommending that the Bureau of Indian Affairs be replaced by an Indian Affairs Administration are: (1) Elevation in status to improve the prospects for recruiting topflight perseonnel; (2) give the Commissioner greater communication leverage in dealing with other agencies; (3) improve the prospects of obtaining Indian support for the reorganization proposal; (4) provide an opportunity to restructure the current BIA organization to reflect appropriate changes in program philosophy, management requirements, etc.

(*d*) A formal interagency committee, established by Executive order, is essential. Without such an instrumentality, it will continue to be impossible to obtain all the necessary data from all the relevant agencies to examine either retrospectively or prospectively all U.S. Government activities vis-a-vis Indians. Furthermore, it will be difficult or impossible to agree on common policies or coordinated programs where such may be indicated. While interagency committees are undeniably cumbersome and time consuming, they are sometimes essential. In the opinion of the task force, an interagency committee on Indian affairs, with appropriate terms of reference, is essential and should be established as soon as possible. The committee should be chaired by the Commissioner of Indian Affairs and should include representatives from HUD, Commerce, Interior, Agriculture, PHS, OE, Welfare Administration, OEO, and Labor. As an initial task, it should develop, with the assistance of the Bureau of the Budget, clear reporting requirements. Secretariat service for the committee should be provided by the Commissioner for Indian Affairs.

(*e*) With regard to public disclosure of this proposal, first, there are clear indications that if suddenly confronted with this proposal, the Indian leaders will regard it as being linked in some way with the "termination" policy, which they so strenuously oppose (i.e., "termination" of the special status of the Indian in relation to the U.S. Government).

Second, for this reason, it would almost certainly be rejected by the Indian leaders if it were presented as a separate issue before they had had a chance to review the substance of whatever new program is decided upon. For, it will be the degree of attractiveness of the new program itself, especially its policy on "termination" that will largely determine Indian acceptance of the transfer proposal.

Third, for the same reason, this is the only one of the task force proposals which, if mentioned out of context prematurely in the press, could cause serious harm in terms of Indian acceptance of any proposed new programs.

Fourth, a longer and more carefully planned effort will be necessary, therefore, to get proper Indian consideration of this proposal than for the other task force proposals. With thoughtful presentations, solidly linked to all the other aspects of a new program, however, it should be possible for the transfer proposal to get a satisfactory amount of support among the Indian leaders.

(*f*) The task force realizes that the transfer of BIA's functions and personnel to a new organization in HEW is a major undertaking and must be preceded by very careful study, development of detailed plans, extensive consultation with and careful consideration of the thousands of individuals involved. Reorganizations, hastily planned and executed, can sometimes do irreparable damage. It is exceedingly important that this reorganization be carried out with great care in order that the new organization be launched with minimum trauma.

(*g*) Assuming an affirmative decision to transfer the BIA functions to HEW, the desirability of having HEW assume responsibility for preparation of the Indian Affairs budget for fiscal year 1969 is self-evident. It may take several months to plan the transfer, and several more to implement it fully. It is probable, therefore, that the process of fiscal year 1969 budget preparation will have to get underway long before the transfer is completed. Nevertheless, it would be desirable for HEW to assume responsibility for fiscal year 1969 budget preparation and presentation so that the Secretary of HEW will be in the position of assuming responsibility for executing a program he was responsible for preparing and defending.

(*h*) A high level public advisory committee on Indian Affairs, comprised mainly of Indians who live on reservations, would help the Commissioner and the Secretary to keep in touch with Indian attitudes and would serve to give the Indians an opportunity to participate in major policy decisions. The group should consist of 12–15 members; they should be appointed for 3 years each with overlapping terms so that one-third of the group should be appointed each year. This committee should be consulted on all major policy and program issues and should be given an opportunity to meet with the Secretary at least once each year. It should elect its own chairman.

SUMMARY OF RECOMMENDATIONS

I. MAJOR POLICY STATEMENT BY THE PRESIDENT

Should emphasize (1) the unique character of the relationship between the U.S. Government and the Indians, (2) affirm the continuing responsibility of the U.S. Government to protect the tribal estate and to continue other special services to Indians as long as they are desired by the Indians (i.e., disavow "termination" as a Federal policy objective), (3) maximize the role of the Indians in designing and operating programs on their own behalf, and (4) set forth the objectives of a 10-year program to bring Indian family income, education, health, housing, and transportation up to the national levels.

II. REDUCE UNEMPLOYMENT ON RESERVATIONS

A. Induce private industry to locate manufacturing plants on or near reservations by authorizing:

1. A 10-year tax credit, based on the numbers of Indians employed, for firms that establish new plants on or near Indian reservations;
2. Rapid depreciation allowances for equipment installed in plants on Indian reservations;
3. Tax-free bond financing (through a federally-chartered Indian National Development Corp.) for construction of factory buildings and related facilities on reservations to offer modern plants at reasonable rentals to interested industries;
4. Authorization and $10 million in appropriations for a demonstration program to build two planned industrial communities on Indian reservations.

B. Foster development of Indian-owned and operated enterprise by establishing a federally-chartered Indian National Development Corp. authorized to:

1. Issue $200 million in bonds.
2. Guarantee private loans to Indian businesses.
3. Manage the Indian Revolving Loan Fund (now managed by BIA).
4. Charter tribal corporations.
5. Provide technical assistance to assist tribes in planning and managing tribal economic development activities.

C. Take short-term measures to reduce male unemployment on reservations:

1. Use speeded-up housing, health and transportation programs as opportunities for on-the-job training as well as prime opportunities for Indian employment.
2. Request $20 million appropriation for combined on-the-job training and public works program to provide immediate employment on Indian reservations and to up-grade the skills of many of the unskilled unemployed.
3. Establish prevocational training programs for unskilled unemployed; these should last up to 2 years and those enrolled should be paid at same rates as unemployment compensation.

III. IMPROVE EDUCATION, HEALTH, HOUSING, TRANSPORTATION

A. Improve quality of education of Indian children by:

1. Making BIA schools into model system.
2. Establish school boards for each BIA school.
3. Establish statutory National Advisory Committee on Indian Education.
4. Direct U.S. Office of Education to give special attention to helping States improve quality of education offered to Indian children.

B. Improvement in Indian health is dependent primarily on:

1. Improved housing and in educating Indian people in the use of sanitarily protected housing; and on
2. Expanding home education programs through the use of community health aides employed by the tribe.

C. Over a 10-year period provide Indians and Alaskan natives with an opportunity for decent housing by using all available public and private resources, and taking the following specific actions to build an average of 8,000 new units a year:

1. Providing, on an annual basis, $16 million in additional funds allocated amongst BIA's direct housing program ($7 million), BIA housing assistance personnel ($1 million), and Public Health Service water and sanitation facilities ($8 million).
2. An HUD Demonstration Indian Housing program costing $5 million.
3. A special $5 million BIA loan fund for extensions.
4. Authorizing the Farmers Home Administration to make direct loans to nonfarm Indians.
5. Authorizing the Secretary of HUD to make grants of up to 100 percent to foster repairs and improvements.
6. In general, encouraging all Government departments concerned to accord a high priority to the speeding of low-cost housing programs for Indians within their presently authorized programs.

D. Improve highway transportation on Indian reservations by:

1. Doubling BIA highway construction authorization (from $42 million for fiscal year 1968–69 to $84 million for those 2 years).
2. Directing Bureau of Public Roads to make special efforts to encourage States to construct more roads on Indian reservations under Federal grant programs.
3. Fostering development of public transportation on Indian reservations.

IV. ORGANIZATION

A. Transfer Bureau of Indian Affairs from Interior to HEW and reorganize and upgrade it into Indian Affairs Administration; consider transfer of Division of Indian Health into Indian Affairs Administration.

B. Establish statutory National Advisory Council on Indian Affairs.

C. Establish Inter-Agency Committee on Indian Affairs.

G. Interdepartmental Report on Organizational Location for Quality Education of American Indians

I. Background of Report

PURPOSE

The fundamental question of this report—whether the responsibility for American Indian education should be transferred from the Bureau of Indian Affairs to the U.S. Office of Education—was raised in April 1966 at a hearing of the Senate Subcommittee on Education considering the extension of programs and services under the Elementary and Secondary Education Act of 1965 (Public Law 89-10) to Indian youngsters enrolled in Federal schools. A request was made to the Secretaries of the Departments of Interior and Health, Education, and Welfare to explore the advisability and feasibility of such a transfer. An interdepartmental committee was appointed under the cochairmanship of Mr. Robert E. Vaughan, Deputy Assistant Secretary for Public Land Management, Department of the Interior, and Dr. Joseph G. Colemen, Deputy Assistant Secretary for Education, Department of Health, Education, and Welfare.

Despite the complexities and interrelationships of the many problems facing American Indians, the scope of this study was limited to Indian education.

SUMMARY

Because education is inextricably linked to the other human service functions and because transfer of the education function would result in further fragmentation of the total spectrum of services now afforded American Indians by the Federal Government, the Departments recommend that the Bureau of Indian Affairs should retain the education function at this time, working in close cooperation with the Office of Education to develop a high quality program of Indian education. This recommendation also reflects prevailing Indian opinion.

Wherever the locus of responsibility resides, the Departments believe that the federally run Indian education program should be an exemplary system directed at providing the highest quality education to meet the special needs of Indian people. All resources required to achieve the desired goals should be made available. Accordingly, the Departments have carefully and deliberately compiled, with the assistance of Indian leaders and other knowledgeable persons and groups, a set of recommendations which should be given consideration in any serious effort to improve Indian education.

II. Indian Education

In order to make the best judgment regarding placement of responsibility for Indian education, it is necessary to understand the role of the Federal Government in the education of Indians, the evolution of this role through the years, and the present status of Indian education. Perhaps the most descriptive and valid generalization concerning the history of Indian education is that the aims and efforts made to educate Indian people through the years have reflected the prevailing attitudes of the majority of non-Indian people toward the American Indian.

HISTORICAL BACKGROUND

Prior to 1870 most efforts to educate Indians were made by religious groups. Although the Bureau of Indian Affairs was established in 1824 and was transferred from the War Department to the newly created Department of the Interior in 1849, the Federal Government assumed only limited responsibility for Indian education during this period. The national policy toward Indians during this period was one of suppression and isolation on reservations while efforts were exerted by religious groups to Christianize Indians and to teach them farming, homemaking, and the three R's. Because the great majority of Indians did not accept education during this period, these efforts had little impact.

The year 1870 is often cited as the beginning of the reservation period, which has been characterized by varying degrees of Federal paternalism. With the exception of the religious emphasis, the growing role of the Government in Indian education after 1870 was directed toward the same goals as those prevailing during the previous period and with about the same success. The new policy statements of 1889 included the intention to "absorb Indians into our national life." This intent was manifest in education through the practice of separating Indian children from their families and sending them to attend boarding schools.

The appearance of the Meriam report, a survey of Indian social and economic conditions conducted during 1926–28, contributed to a change of attitude toward Indians. Greater emphasis was placed on self-government for Indian tribes, on an improved system of education, and on participation of State and local agencies in Indian affairs.

The period since 1930 has been characterized by gradual assumption of responsibility for the education of Indian children by the States, aided by provision of Federal funds. The pace at which State and local governments have assumed responsibilities for education and other services has engendered fear that the Federal Government may withdraw entirely from its special relationship to Indians; and this fear continues to have a dominant influence on Indian reaction to changes in the extent, nature, and administration of Federal programs.

SINCE 1960

During the period since 1960, Indians have been the beneficiaries of many new Federal programs which have come into being as a result of the increased national awareness of the problems of disadvantaged citizens. Among the agencies administering such programs are the Office of Economic Opportunity, the Economic Development Administration, and the Housing Assistance Administration.

The major thrust of the Bureau's educational program is to provide a high quality education which will prepare Indian children for life in the 20th century. This includes the teaching of communication skills, vocational training, and the providing of guidance and counseling for cultural adjustment. The Bureau is attempting to attain a goal which would result by the 1970's in most Indian youth graduating from high school and continuing their formal training in colleges or vocational and technical schools. Transfer of responsibility for the education of Indian children to local school districts continues to be one of the objectives of the Bureau of Indian Affairs.

NEW LEADERSHIP

The current atmosphere for progressive change within the Bureau suggests that efforts will be made to insure improvement in education afforded Indians.

A National Education Advisory Committee on Indian Leadership has been established to assist in the planning and implementation of programs and projects under Public Law 89–10, as well as to advise on all matters pertaining to the education of Indians.

The newly established educational objectives of the BIA are as follows:

1. As many children as possible should be moved out of boarding schools, particularly off-reservation boarding schools, and placed in community schools on the reservation. This is based on the theory that the most effective education takes place when children are educated in their local community and when their parents are involved in educational policy decisions and implementation. In such circumstances, adult and community education take place simultaneously. Furthermore, in a community school setting financial benefits of a school accrue locally. However, it would not be beneficial to make such a move until the local school is prepared to offer education of at least equal quality.
2. Quality education must be stressed in any federally run program. Indian education should be an exemplary system of instruction. All of the teaching technologies available should be brought to bear on the instruction of Indian children.
3. The community action concept should be utilized wherever possible. Kindergarten and Headstart programs should be made available to all Indian children.
4. There should be administrative accountability within the Education Division and the Assistant Commissioner (Education) should have direct line authority over the program (promotions, transfers, etc.).

POPULATION AND ENROLLMENT TRENDS

The Indian population in the United States, estimated to have been more than 800,000 at the end of the 15th century, gradually decreased to about 240,000 at the end of the 19th century. The population has been growing rapidly since that time, and in 1960 there were 524,000 Indians, and an additional 29,000 Eskimos and Aleuts in Alaska, bringing the total to 552,000. At least 380,000 receive some services from the Bureau of Indian Affairs and the Division of Indian Health (HEW's Public Health Service).

Due to the high birth rate during the 1950–60 decade, the number of Indian children of school age has greatly increased. Furthermore, a determined effort has been made during recent years to make educational opportunities available to all Indian children. Public school enrollment of Indians is higher than ever before; yet, despite the large number of students that have been transferred to local school districts, the number of students attending Bureau schools has grown from 42,000 in 1961 to nearly 50,000 during the current school year. The Bureau now operates 254 schools, 31 fewer than the high of 285 schools in 1959.

BIA FUNDING

For fiscal year 1967, $84.4 million was appropriated for the educational activities of the Bureau of Indian Affairs, and nearly $40 million for construction of schools and related facilities. Of the $84.4 million, $72.2 million is earmarked for Federal school operations. Under the authority of the Johnson-O'Malley Act, $9.5 million is allocated for assistance to public schools: $1.6 million to pay full cost for 2,355 Navajo students in eight "border town" schools; and $7.9 million to assist public schools enrolling some 50,000 Indian students in 17 States. In addition, $2 million is available to provide grants-in-aid to eligible Indian students enrolled in colleges and universities, while $0.7 million has been set aside for adult education activities.

III. INVOLVEMENT OF THE U.S. OFFICE OF EDUCATION IN INDIAN EDUCATION

The principal programs of the U.S. Office of Education from which Indians derive direct benefit are those which provide assistance to local school districts enrolling large numbers of students from federally impacted areas. (For the purpose of these acts Indian reservations have been classified as federally impacted areas.) Public Law 81-874 provides financial assistance to such districts for school operation, and Public Law 81-815 provides financial help for school construction. Local school districts annually receive about $14 million of Public Law 81-874 funds and around $3 million of Public Law 81-815 funds based on their enrollment of reservation Indian youngsters.

Under titles I, II, and III of the Elementary and Secondary Education Act of 1965 (Public Law 89-10) as amended in 1966, Bureau of Indian Affairs schools have obtained about $5.4 million for fiscal year 1967.

Most U.S. Office of Education programs involve grants to State and local educational agencies. It is assumed that large numbers of Indian children in public schools have benefited from services provided through Federal programs such as titles I, II, and III of the Elementary and Secondary Education Act. The U.S. Office of Education has recently undertaken a thorough examination of its resources to identify and to help solve the special problems encountered in the education of Indian children.

In the area of research, the U.S. Office of Education has funded nine research projects concerned with Indian education, seven completed and two in progress. The Bureau of Research is exploring the possibility of funding research and development in selected Indian schools. Also, several regional educational laboratories, which identify educational resources of a given region and act as a link between universities and school systems, have indicated an interest in projects aimed at improvement of education of Indians and other minority groups.

In the area of teacher training, some of the teachers of Indian children have already been involved in summer institutes funded under the National Defense Education Act. Many more opportunities for such training will soon be available.

A data base for ascertaining the statistical impact of educational programs on Indian children, or the numbers affected by specific programs, is largely absent. Such data should be available beginning in July 1967 from the Office of Education for those programs in which Indian children are participating.

IV. DENVER MEETINGS WITH INDIAN LEADERS AND OTHERS

Two meetings were held November 9–12, 1966, in Denver to discuss where responsibility for Indian education should be located within the Federal Government. Lists of those attending these meetings are attached.

Attending the first meeting were 18 Indian tribal chairmen and members of tribal education committees, representing 76 percent of the total enrollment in Bureau of Indian Affairs schools and 60 percent of the entire reservation population.

Indian representatives expressed concern about the transfer of education from BIA to the Office of Education. Fearful of "termination" of Federal activities in their behalf, they are generally opposed to the disruption of the traditional relationships which has existed with the Government. They indicated distrust of the fragmentation of Indian services within the Federal Establishment and felt that their welfare would suffer if these functions were further divided between agencies rather than remaining concentrated in the Bureau of Indian Affairs.

Attending the second meeting were college and university faculty who have conducted research on Indian problems, teachers of Indian children from both BIA and public schools, and others who have been involved in the educational aspects of community action programs. This group agreed that major responsibility for Indian education should remain within the BIA, provided that the BIA work closely with the Office of Education to make available the kinds and amounts of additional resources necessary to accomplish agreed upon objectives.

Participants in the second meeting maintained that Indian education must be viewed in the context of the considerable variation among and within tribes, taking into consideration such differences as levels of economic and social development and educational expectations. They felt that educational programs should recognize the different problems of Indians in Federal and public schools and should consider the readiness of local or State systems to provide quality educational services. They recommended further that local studies be undertaken with the assistance of Indian groups, non-Indian groups, and State and Federal officials; and that Governors of the States involved should call attention to the need for improvement of educational opportunities for Indians in public schools.

The consensus at both meetings was that the BIA should be given time to carry out its new educational program before serious consideration is given to a transfer of the education function from one agency to another.

V. MEETING WITH REPRESENTATIVES OF STATE DEPARTMENTS OF EDUCATION

Because of State and local involvement in Indian education, the committee met with representatives designated by the chief State school officers of 15 States with significant Indian populations.

The experience of the several States in Indian education provided the general framework for discussion, with particular emphasis on the willingness and capability of States to exert greater effort in Indian education. Much of the discussion centered on the need for Federal assistance to help accomplish these objectives because of the limited financial resources of local school districts in many Indian areas.

There was no consensus among these representatives concerning the proposed transfer of the education function from BIA to the Office of Education and many stated they did not feel sufficiently informed to express a firm opinion.

VI. TRANSFER OF INDIAN HEALTH TO THE PUBLIC HEALTH SERVICE

In an attempt to gain further insight into the possible effects of transferring Indian education, members of the Public Health Service were consulted regarding the transfer of Indian health from the Bureau of Indian Affairs to that agency in 1955. In reconstructing that transfer, it appeared that the decision was made quite suddenly, and was not based on the opinions of Indian people to any significant extent.

The Division of Indian Health of the Public Health Service has been able to apply greater resources to the problems of Indian health and to work more independently than was possible previously. Since the transfer, there has been a marked improvement in the state of Indian health. Nevertheless, some of the Indian leaders at the Denver meeting expressed dissatisfaction with health services.

There are basic and significant differences in the circumstances surrounding Indian health and Indian education. There is no counterpart in health to the existing system of State-supported education with well-established relationships between these systems and the U.S. Office of Education. Further, the Public Health Service is experienced in the operation and control of hospitals and other medical facilities, whereas the Office of Education has never operated schools or school systems.

VII. ANTICIPATED EFFECTS OF TRANSFERRING INDIAN EDUCATION

The effects of transferring responsibility for Indian education from the BIA to the Office of Education must be analyzed in the context of providing improved quality of educational opportunities for Indian children. The committee identified the following significant advantages and disadvantages:

ADVANTAGES OF TRANSFER

1. The quality of Indian education might be expected to increase as a result of the augmentation of significant professional expertise, research capability, and financial resources.

2. A more positive public image of Indian education could result from greater identification with the education profession.

3. The Office of Education would have great incentive to build a model program for the education of Indian youth, particularly since this would be its only direct operational program.

4. A more effective transition of education functions from Federal to State Governments might take place with the more viable relationships which exist between the Office of Education, State departments of education, and local educational agencies.

DISADVANTAGES OF TRANSFER

1. The portion of the Bureau remaining after transfer of the education function might be handicapped, and the quality of remaining services might deteriorate. At present approximately 70 percent of the total BIA budget is allotted to education activity. Because of the intricate dovetailing of funding structure, personnel functions, and other services which has developed over the years, education is closely related to other BIA activities. A transfer of the education function doubtless would result in a period of dislocation.

2. Indian people tend to view a transfer of this nature as an additional step toward termination of Federal responsibility, a policy strongly opposed by most Indians.

3. A transfer of education alone would result in further fragmentation of services which would necessitate Indians dealing with yet another Federal agency. This diffusion of services is viewed as eventually decreasing the measure of total, integrated assistance to Indians, when it would appear more beneficial to be consolidating or in other ways improving the coordination of direct personal service programs.

VIII. RECOMMENDATIONS FOR IMPROVING INDIAN EDUCATION

The recommendations which follow have resulted from consultations with Indian groups and with specialists in Indian education and related areas, as well as from the deliberations of the committee itself. Recommendations are set forth in two sections. The first deals with those matters which involve policy and administrative decisions which can be effected within the existing system, provided that additional resources are made available. The second section includes those items which require additional legislation.

POLICY AND ADMINISTRATION

1. The Bureau of Indian Affairs should retain the education function at this time, working in close cooperation with the Office of Education to develop a high quality program of Indian education.

2. As long as the Federal Government operates schools, the principal official responsible for education should be in a role comparable to that of a superintendent of a major school system, i.e., with full responsibility for the total educational enterprise, including school construction, operation, and maintenance.

3. The Office of Education in HEW should review all its programs to determine how to make these available to the greatest extent possible for the benefit of Indian children enrolled in federally operated schools. In its own programs the Office of Education should exert

influence to insure that resources become and continue to be available for Indian children enrolled in public schools and should urge States to give the same emphasis to Indian children.

4. Education must be viewed as a single, continuing process which ranges from preschool through adulthood. Beginning with preschool experience for all Indian children, the research and development capacity of the appropriate agencies should be strengthened in order to tailor educational programs to the needs of Indian people. Study should be made of the possible application of new educational technologies. Greater attention and support should be given to special education, since there is a high incidence of disability and handicaps among Indian children. Attention should be given to funding experimental programs at universities to assist Indian youth in adjusting to contemporary American society. Consideration should be given to supporting a center for graduate study of the languages, history, and culture of American Indians.

5. Strong support should be given to the BIA objective of moving Indian youngsters out of boarding schools and placing them in community schools on the reservation as soon as this can be done with no reduction in the quality of education.

6. Every effort should be made to encourage Indian parents and tribal leaders to assume increasing interest in and responsibility for the education of Indian children in accordance with the concept of community action. School boards, elected by the community and entrusted with appropriate responsibility for education, should be adopted as standard operating procedure. Specialized training programs should be instituted for board members. Study also should be given to the possibility of making grants directly to Indian groups to administer their own educational systems.

7. Staffing policies and procedures should be reviewed to develop procedures for recruitment and selection to assure employment and retention of the highest quality staff. Positions in education should be alined with the rest of the education profession, e.g., in terms of work year, incentives such as salary, opportunity for continuing education, etc. Consideration should be given to acquiring staff for schools in isolated areas by creating a volunteer or limited assignment category which might increase the likelihood of attracting well-qualified staff committed to working with the Indian child. Programs such as Teacher Corps and VISTA should be fully utilized. The roles of teacher and dormitory aids and other supportive personnel should receive appropriate consideration, particularly as a means of involving the community.

8. A review of vocational education opportunities for Indian young people and adults should be undertaken at both the State and National levels. The most extensive program of vocational education possible should be available to Indians, beginning at the high school level, and should be closely tied to job availability and family mobility. Every Indian who completes high school should have an opportunity for college or additional vocational training.

9. Efforts should be accelerated with State departments of education and local school districts to help them prepare to assume increased responsibility for the education of Indian children currently enrolled in BIA schools, in accordance with the BIA's policy of movement toward the public school system.

10. The U.S. Office of Education and the BIA should stimulate local school districts to take a more active part in bringing Indian children into their schools. Such a program will require in each community, planning meetings involving Indians, their non-Indian neighbors, local school officials, and representatives of State and Federal Governments. Integrated education should be encouraged. In many cases, however, this will be impossible because of extreme physical isolation.

11. A comprehensive study of the educational needs of Indians and the effectiveness of present programs—Federal, State, and local—in meeting these needs should be undertaken.

12. Ways should be explored to encourage development of junior or community colleges on or near the larger reservations to facilitate opportunities for larger numbers of Indian children to receive higher education. A central criterion in establishing such a school should be attendance by non-Indian as well as Indian children.

LEGISLATION

13. The BIA authorization for titles I, II, and III of the Elementary and Secondary Education Act should be extended beyond the present expiration date of June 30, 1967, and made consistent with the timing of the balance of the act.

14. Public Law 81-815 should be amended to liberalize the provision for construction of public school facilities in areas with concentrations of Indian children.

15. Consideration should be given to transferring the Johnson-O'Malley program from the BIA to the Office of Education. This program, which provides funds for supplementary services for Indian children enrolled in public schools, bears a direct relationship to programs administered by the Office of Education. JOM assistance being provided at present consists of special services such as those under title I of Public Law 89-10, and more general assistance such

as that provided under Public Law 81–874 for impact areas. Closer coordination of all these programs should increase efficiency and effectiveness.

Respectfully submitted,
Department of the Interior:

ROBERT E. VAUGHAN,
Deputy Assistant Secretary.

JAMES E. OFFICER,
Associate Commissioner, Bureau of Indian Affairs.

DR. CARL L. MARBURGER,
Assistant Commissioner of Education,
Bureau of Indian Affairs.

Department of Health, Education, and Welfare:

JOSEPH G. COLMEN,
Deputy Assistant Secretary for Education.

WALTER E. MYLECRAINE,
Assistant to Deputy Commissioner,
U.S. Office of Education.

ROSEMARY GEORGE,
Indian Education Specialist,
U.S. Office of Education.

MEETING ON INDIAN EDUCATION, DENVER

NOVEMBER 9–10, 1966

Bonito, Wesley, education committee, Apache Tribe, box 864, Whiteriver, Ariz.
Colmen, Joseph G., Deputy Assistant Secretary for Education, Department of Health, Education, and Welfare, Washington, D.C.
Coombs, Madison, Deputy Assistant Commissioner for Education, Bureau of Indian Affairs, Washington, D.C.
Cooper, Samuel, Tribal Council, Mescalero Apache, Mescalero, N. Mex.
Deloria, Vine, Jr., executive director, National Congress of American Indians, 1452 Pennsylvania, Denver, Colo.
Ducheneaux, Frank, chairman, Cheyenne River Sioux Tribe, Eagle Butte, S. Dak.
George, Rosemary, Division of Compensatory Education, U.S. Office of Education, Washington, D.C.
Hart, Lawrence H., chairman, Cheyenne-Arapaho Tribe, box 38, Concho, Okla.
Heckman, Fred, president's staff, Mescalero Apache, Mescalero, N. Mex.
Holy Rock, Johnson, president, Oglala Sioux Tribe, Pine Ridge, S. Dak.
Jackson, Vernon, executive director, Confederated Tribes, Warm Springs, Oreg.
Jamerson, Theodore, Standing Rock Sioux Tribe, Fort Yates, N. Dak.
Lekanof, Flore, chairman, Alaska Federation of Native Associations, box 1152, Fairbanks, Alaska.
Little Soldier, August, chairman, Fort Berthold, New Town, N. Dak.
Marburger, Carl L., Assistant Commissioner for Education, Bureau of Indian Affairs, Washington, D.C.
Martin, Phillip, Mississippi Choctaw Tribe, Route 7, Philadelphia, Miss.
Montoya, Domingo, chairman, All Pueblo Council, Albuquerque, N. Mex.
Morton, Tommy R., Executive Council, Cherokee Tribe, box 282, Stilwell, Okla.
Mylecraine, Walter, Assistant to Deputy Commissioner, U.S. Office of Education, Washington, D.C.
Officer, James, Associate Commissioner, Bureau of Indian Affairs, Washington, D.C.
Osceola, Laura Mae, secretary treasurer, Seminole Tribe, 6073 Sterling Road, Hollywood, Fla.
Otte, Arland, U.S. Office of Education, Washington, D.C.
Rock, Howard, editor, Tundra Times, box 1287, Fairbanks, Alaska.

Thom, Melvin D., chairman, Walker River Paiute Tribe, box 118, Schurz, Nev.
Valandra, Cato W., president, Rosebud Sioux Tribe, Rosebud, S. Dak.
Vaughan, Robert E., Deputy Assistant Secretary for Public Land Management, Department of the Interior, Washington, D.C.
Walker, Tillie, executive director, United Scholarship Service, 1452 Pennsylvania, Denver, Colo.

NOVEMBER 11-12, 1966

Aberle, Sophie D., coordinator of research, Psychiatric Department, University of New Mexico, Albuquerque, N. Mex.
Colmen, Joseph G., Deputy Assistant Secretary for Education, Department of Health, Education, and Welfare, Washington, D.C.
Deloria, Vine, Jr., executive director, National Congress of American Indians, 1452 Pennsylvania, Denver, Colo.
Denny, Benjamin, Jr., 833 Ponderosa Avenue NW., Albuquerque, N. Mex.
Dozier, Edward P., professor of anthropology, University of Arizona, Tucson, Ariz.
Ducheneaux, Frank, chairman, Cheyenne River Sioux Tribe, Eagle Butte, S. Dak.
Echelberger, Winifred T., Pierre Indian School, 808 North Central, Pierre, S. Dak.
Fitzgerald, R. E., superintendent, Seneca School, Wyandatte, Okla.
Gaasland, John, 840 Fourth Street, Wapheton, N. Dak.
Geboe, Charles G., director, Indian community action project, University of South Dakota, box 85, University Exchange, Vermillion, S. Dak.
Gentry, Robert J., director, child development programs, University of Oklahoma, Norman, Okla.
George, Rosemary, Division of Compensatory Education, U.S. Office of Education, Washington, D.C.
Hensley, William L., vice chairman, Statewide Native Conference, box 33, Kotzebue, Alaska.
Kelly, William H., professor of anthropology, University of Arizona, Tucson, Ariz.
Lantis, Margaret, professor of anthropology, University of Kentucky, Lexington, Ky.
Lekanof, Flore, chairman, Alaska Federation of Native Associations, box 1152, Fairbanks, Alaska.
Marburger, Carl L., Assistant Commissioner for Education, Bureau of Indian Affairs, Washington, D.C.
Moore, Josiah, Papago Tribe, post office box 277, Sells, Ariz.
Mylecraine, Walter, Assistant to Deputy Commissioner, U.S. Office of Education, Washington, D.C.
Officer, James, Associate Commissioner, Bureau of Indian Affairs, Washington, D.C.
Otte, Arland, U.S. Office of Education, Washington, D.C.
Owens, Charles S., director of Indian education, State department of education, Santa Fe, N. Mex.
Parmeter, Adrian T., Bureau of Research, U.S. Office of Education, Washington, D.C.
Rock, Howard, editor, Tundra Times, box 1287, Fairbanks, Alaska.
Roessel, Bob, Rough Rock Demonstration School, Chinle, Ariz.
Snider, Glenn, professor of education, University of Oklahoma, Norman, Okla.
Thomas, Hadley A., box 35, Tuba City, Ariz.
Tilson, David, National Institutes of Health, Washington, D.C.
Tyler, S. Lyman, director, bureau of Indian services, University of Utah, Salt Lake City, Utah.
Vaughan, Robert E., Deputy Assistant Secretary for Public Land Management, Department of Interior, Washington, D.C.
Victor, Wilma L., superintendent, Intermountain School, Brigham City, Utah.
Ward, Phillip, Jr., director of instructional services, department of public instruction, Helena, Mont.
Wilson, Jim, Director, Indian Branch, Office of Economic Opportunity, Washington, D.C.
Yazhe, Ethel, Hunters Point School, St. Michaels, Ariz.
Zintz, Miles V., professor of education, University of New Mexico, Albuquerque, N. Mex.

The Secretary of Health, Education, and Welfare,
Washingon, D.C., December 11, 1968.

Hon. Wayne Morse,
Chairman, Indian Education Subcommittee, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: As I promised in my letter of November 8, I am enclosing the Department's comments on the implementation of the recommendations of the May 1967 report on quality education for American Indians.

Overall, I think the Departments of Interior and Health, Education, and Welfare have made meaningful strides in the last year and half. Certainly in this Department we are more aware and attentive to Indian needs. This concern is reflected in the establishment at the secretarial level of a departmentwide focal point to assure that the services and benefits of all its programs are responsive and appropriate to the needs of Indian people. As a logical extension of this concern, an Indian unit has been established in the Office of Education. Our Division of Indian Health remains a successful example of this concern. It might, therefore, seem reasonable and efficient that management of Indian education be assigned to the Office of Education, but I still support the interdepartmental report of 1967 in this regard. Until the American Indians can perceive significant and newly added material benefit arising from transfer action, the experts will be convincing only themselves.

If I may leave in this record one strong emphasis, it is that the next thrust to remedy the human resource problems of American Indians be marked by a major effort in bringing the bureaucrats and the American Indians together in recognizing the value of a productive partnership between the Departments of Interior and Health, Education, and Welfare.

Sincerely,

Wilbur J. Cohen, *Secretary.*

1. Status Report—Implementation of Recommendations

"Quality Education for American Indians: A Report on Organizational Location" (May 1967)

1. The Bureau of Indian Affairs should retain the education function at this time, working in close cooperation with the Office of Education to develop a high quality program of Indian education.

The Bureau of Indian Affairs and the Office of Education have continued to work together to expand educational opportunities available to Indians. For the most part, this cooperation has been on an ad hoc basis, responding to specific concerns as need arose.

With the impetus of the President's March 1968 Message on the American Indian, however, the Office of Education was able to establish mechanism by which to address these directives. An OE Indian task force, composed of representatives from each major jurisdiction and chaired by the Assistant Commissioner, Office of Programs for the Disadvantaged, was appointed to assist in policy formulation and implementation. In April 1968 an Indian Education Unit was created to guide OE-wide effort to fulfill objectives set forth in the new national Indian policy.

OE's Indian Task Force and Indian Education Unit have worked with HEW's Office for Indian Progress on a planning strategy which would enable BIA and OE to develop a National Indian Education Program based on goals described in the President's message. Although basic agreements have been reached between the two agencies, details of the stratgy await delineation. In the broadest sense, this joint planning mechanism would provide for meeting educational and related needs of Indians—wherever they might reside or be enrolled in school.

2. As long as the Federal Government operates schools, the principal official responsible for education should be in a role comparable to that of a superintendent of a major schools system, that is, with full responsibility for the total educational enterprise, including school construction, operation, and maintenance.

This recommendation applies to the Bureau of Indian Affairs.

3. The Office of Education in HEW should review all its programs to determine how to make these available to the greatest extent possible for the benefit of Indian children enrolled in federally operated schools. In its own programs the Office of Education should exert influence to insure that resources become and continue to be available for Indian children enrolled in public schools and should urge States to give the same emphasis to Indian children.

OE conducted several surveys—January 1967 and March 1968—to determine eligibility and participation of Indians in OE-administered programs. Because of difficulty in obtaining ethnic data, these surveys were inconclusive.

In January 1967 OE prepared a chart which categorized all appropriate programs according to type of service and level of education. Color-coding was used to illustrate eligibility of BIA. This chart was used at BIA orientations and transmitted to the BIA Assistant Commissioner (Education).

Recognizing the need to systematize data about Indian participation in all HEW programs, the Office for Indian Progress in the Office of the Secretary formulated a mechanism by which such information could be collected simultaneously with regular program planning and budgeting submission. OE became directly engaged in the first cycle in spring 1968.

OE's Indian task force and Indian education unit are working with legislation and program representatives to insure that eligible Indians—wherever they may reside or be enrolled in school—are included in programs and services made available through OE programs. Via State plan mechanisms and other means of influence, OE attempts to stimulate sensitivity about special problems of American Indians.

4. Education must be viewed as a single, continuing process which ranges from preschool through adulthood.

OE strongly endorses this basic assumption, which was reinforced in the President's message. OE has proceeded to make the development of community education systems—devised in cooperative relationship between Indians and agencies with which they must deal—the primary focus for effort in Indian education.

> Beginning with preschool experience for all Indian children, the research and development capacity of the appropriate agencies should be strengthened in order to tailor educational programs to the needs of Indian people. Study should be made of the possible application of new educational technologies.

The "National Study of American Indian Education" (described in detail under recommendation No. 11) is expected to recommend priority areas for attention—both in action and in further research. The most costly study ever funded in Indian education, it was intended to be helpful to BIA and OE in implementing the intent of this recommendation.

The research design of Project Follow Through, assessing impact of various models of early childhood education, should contribute important findings. Seven of 90 Follow Through projects are located in Indian areas: Arizona—Oraibi (Hopi) and Rough Rock (Navaho), California—Stewarts Point, Mississippi—Philadelphia (Choctaw), North Dakota—Fort Yates, South Dakota—Rosebud, Wisconsin—Lac du Flambeau.

> Greater attention and support should be given to special education, since there is a high incidence of disability and handicaps among Indian children.

OE's Bureau of Education for the Handicapped made a title VI ESEA grant of $30,000 in fiscal year 1968 to BIA to survey incidence of disabilities among its school population. BEH is examining its programs to determine further ways in which programs serving Indian children can be identified and additional efforts mounted.

> Attention should be given to funding experimental programs at universities to assist Indian youth in adjusting to contemporary American society.

About six programs funded under Project Talent Search assist in identification and recruitment of talented Indian students and help to mobilize resources for them to attend college. Indian groups—the All-Pueblo Council in New Mexico and the United Scholarship Service in Denver—contract to operate two of these projects. OE's developing institutions program has funded at least one college to provide specifically for compensatory and counseling services to retain Indian students who otherwise would drop out.

> Consideration should be given to supporting a center for graduate study of the languages, history, and culture of American Indians.

Although several agencies—including OE, BIA, and the Office of Economic Opportunity—have had conversations concerning the desirability of such an undertaking, limited funding has necessitated concentration on other priorities.

5. Strong support should be given to the BIA objective of moving Indian youngsters out of boarding schools and placing them in community schools on the reservation as soon as this can be done with no reduction in the quality of education.

Implementation of this recommendation depends primarily on initiative of the Bureau of Indian Affairs. Because of limitations on appropriations under Public Law 81–815 (as amended), little assistance has been available for construction of public school facilities in anticipation of increased Indian enrollment.

6. Every effort should be made to encourage Indian parents and tribal leaders to assume increasing interest in and responsibility for the education of Indian children in accordance with the concept of community action. School boards, elected by the community and entrusted with appropriate responsibility for education, should be adopted as standard operating procedure. Specialized training programs should be instituted for board members. Study also should be given to the possibility of making grants directly to Indian groups to administer their own educational systems.

Although OE action in this arena is necessarily limited because it neither operates schools nor exercises control over operation of schools, several steps are being taken to encourage greater participation on the part of Indian people in their own education and that of their children.

OE's Indian task force has recommended that, in view of constraints on resources and technical assistance in fiscal year 1969, several "communities" be selected for concentration by all programs. The most important criterion applied is that of Indian initiative. Those Indian communities which have meaningful programs underway already and demonstrate willingness to work cooperatively with various agencies are eligible for special attention.

Increased flexibility under the Educational Personnal Development Act, if authorized, could provide additional opportunity for training of school board members.

Wherever legislation permits, OE contracts are negotiated with Indian groups, and grantee educational agencies are encouraged to subcontract with Indian groups.

7. Staffing policies and procedures should be reviewed to develop procedures for recruitment and selection to assure employment and retention of the highest quality staff. Positions in education should be aligned with the rest of the education profession, for example, in terms of work year, incentives such as salary, opportunity for continuing education, and so forth. Consideration should be given to acquiring staff for schools in isolated areas by creating a volunteer or limited assignment category which might increase the likelihood of attracting well-qualified staff committed to working with the Indian child. Programs such as Teacher Corps and VISTA should be fully utilized. The roles of teacher and dormitory aides and other supportive personnel should receive appropriate consideration, particularly as a means of involving the community.

Although this recommendation is directed primarily to BIA staffing, OE has attempted to implement items which relate to its capabilities.

Teacher Corps has operated thus far as OE thrust in the area of acquiring staff for isolated schools. Two of 27 on-going projects—Northern Arizona University (NAU) in Flagstaff and the University of Nebraska in Omaha—serve Indian children and communities. Eleven of 39 interns in NAU's Teacher Corps project are Indian undergraduate students. All NAU teams teach in schools on the Navajo Reservation with 85–95 percent Indian enrollment—four public, three BIA. Four teams in the University of Nebraska project serve public schools with predominantly Indian enrollment in three northern Nebraska communities and one South Dakota community. Corpsmen are demonstrating willingness to remain in these locations upon completion of training and receipt of degree.

Roles of classroom aides and other supportive personnel are receiving much attention in connection with programs under the Educational Personnel Development Act. Stress is placed on team approach in community-based training. Career development opportunities provided for Indians is high priority consideration in evaluation of project proposals.

8. A review of vocational education opportunities for Indian young people and adults should be undertaken at both the State and national levels. The most extensive program of vocational education possible should be available to Indians, beginning at the high school level, and should be closely tied to job availability and family mobility. Every Indian who completes high school should have an opportunity for college or additional vocational training.

The desirability of a study of vocational education opportunities for Indian young people and adults was explored with OE research representatives, but thus far resource limitations have made funding impossible.

OE is looking toward broader authorities under the newly enacted vocational education amendments of 1968, which increase availability of programs and services for disadvantaged populations. OE's Indian education unit is working with the Indian desks of other Federal agencies to formulate a comprehensive approach to the entire area of vocational training, so that greater continuity and cohesiveness can be assured in terms of long-range economic development of Indian people and land.

9. Efforts should be accelerated with State departments of education and local school districts to help them prepare to assume increased responsibility for the education of Indian children currently enrolled in BIA schools, in accordance with the BIA's policy of movement toward the public school system.

Implementation of this recommendation depends primarily on initiative of the Bureau of Indian Affairs.

10. The U.S. Office of Education and the BIA should stimulate local school districts to take a more active part in bringing Indian children into their schools. Such a program will require in each community, planning meetings involving Indians, their non-Indian neighbors, local school officials, and representatives of State and Federal governments. Integrated education should be encouraged. In many cases, however, this will be impossible because of extreme physical isolation

Although full implementation of this recommendation depends primarily on initiative of BIA, OE is insisting on development of cooperative relationships between Indians and educational agencies with which they must deal as requisite to participation in special programs where resources are allocated on the basis of potential impact on institutional change.

11. A comprehensive study of the educational needs of Indians and the effectiveness of present programs—Federal, State, and local—in meeting these needs should be undertaken.

Responding to the recognized need for a comprehensive study of educational needs of Indians, OE sponsored a "National Research Conference on American Indian Education." Held in May 1967 at Pennsylvania State University, this conference assembled representative Indians and specialists from diverse fields including education, sociology, anthropology, statistics. Guidelines were formulated for a projected national study.

Early in 1968 OE's Bureau of Research funded the initial phase of a 3-year half-million dollar "National Study of American Indian Education." This project is expected to provide Indian leadership and officials of educational agencies that serve Indians with information concerning the educational needs of Indian pupils and the attitudes and expectations of Indian people regarding education.

12. Ways should be explored to encourage development of junior or community colleges on or near the larger reservations to facilitate opportunities for larger numbers of Indian children to receive higher education. A central criterion in establishing such a school should be attendance by non-Indian as well as Indian children.

In accordance with this recommendation, OE is working closely with the newly established Navaho Community College. The Indian education unit serves as a Federal coordinating point for that institution and a variety of agencies which have indicated willingness to be helpful to the Navaho Tribe in this significant undertaking. HEW acted as catalytic agent for an August 1968 interagency meeting with Navaho Community College representatives in which six Departments and OEO participated. OE's Associate Commissioner for Higher Education and his staff have met with the college president and others, as have representatives of other appropriate OE programs.

13. The BIA authorization for titles I, II, and III of the Elementary and Secondary Education Act should be extended beyond the present expiration date of June 30, 1967, and made consistent with the timing of the balance of the act.

In accordance with this recommendation, the administration proposed and Congress enacted extension of the BIA authorization for titles I, II, and III of ESEA. However, the House Appropriations Committee has requested that alternative funding procedures be explored for years subsequent to fiscal year 1969. The manner by which children enrolled in BIA schools will participate in such programs requires clarification.

14. Public Law 81–815 should be amended to liberalize the provision for construction of public school facilities in areas with concentrations of Indian children.

In accordance with this recommendation, Public Law 81–815 was amended in January 1967 to make eligibility for Federal funds less difficult for local educational agencies to meet. Without sufficient appropriations, however, it has been impossible to utilize this liberalization to any significant extent.

15. Consideration should be given to transferring the Johnson-O'Malley program from the BIA to the Office of Education. This pro-

gram, which provides funds for supplementary services for Indian children enrolled in public schools, bears a direct relationship to programs administered by the Office of Education. JOM assistance being provided at present consists of special services such as those under title I of Public Law 89-10, and more general assistance such as that provided under Public Law 81-874 for impact areas. Closer coordination of all these programs should increase efficiency and effectiveness.

In response to specific inquiry from this Department at time of report submission, the staff member of the Senate Subcommittee on Education indicated that HEW would be informed if the subcommittee wished to pursue this matter.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 27, 1968.

Hon. WAYNE MORSE,
Chairman, Special Subcommittee on Indian Education, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR MORSE: We are pleased to respond more fully to your letter of October 23, 1968, in which you inquired concerning progress which has been made in regard to the recommendations contained in the report, "Quality Education for American Indians, a Report on Organizational Location" which was submitted jointly by the Departments of Interior and Health, Education, and Welfare to the Senate Subcommittee on Education in May of 1967.

The 15 recommendations included in the report are reported on separately and in order in the document enclosed.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

2. A STATUS REPORT ON RECOMMENDATIONS 1 THROUGH 15

QUALITY EDUCATION FOR AMERICAN INDIANS, A REPORT ON ORGANIZATIONAL LOCATION

1. The Bureau of Indian Affairs should retain the education function at this time, working in close cooperation with the Office of Education to develop a high quality program of Indian education.

Indian education has made significant progress under the Bureau of Indian Affairs in the Interior Department and we believe the Bureau should retain the education function at this time.

More important than the organizational location of the Federal responsibility is the basic policy of locating responsibility in the local communities concerned. We believe the President has indicated the direction for the transfer of Indian education; namely, the involvement of local Indian communities and the transfer of school functions to them under the control of local school boards. The Bureau of Indian Affairs believes this is a sound approach and proposes to follow it.

2. As long as the Federal Government operates schools, the principal official responsible for education should be in a role comparable to that *of a superintendent of a major school system, that is, with full responsibility for the total educational enterprise, including school construction, operation, and maintenance.*

The principal education officer for the Bureau assumes primary responsibility for educational policymaking and educational leadership, particularly in matters affecting the entire Bureau program. The education program, on the other hand, is one of a number of interrelated functions performed by the Bureau of Indian Affairs with and for Indian people. Line officials in the field, such as area directors and agency superintendents, make operating decisions affecting education as they do in all other areas of activity under their jurisdiction.

With particular reference to school construction, operation, and maintenance, it is recognized that the development of educational specifications is a function which should be performed by educators in consultation with their clients. Therefore, educational specifications for Bureau school construction are now being worked out with tribal officials and public school officials who may have a relevant concern. Design and construction, per se, and maintenance of school property, are technical activities requiring the expertise of architects and engineers and should be under the management of the Division of Engineering, consistent with the educational specifications and requirements which have been developed.

3. The Office of Education should review all its programs to determine how to make these available to the greatest extent possible for the benefit of Indian children enrolled in federally operated schools. In its own programs the Office of Education should exert influence to insure that resources become and continue to be available for Indian children enrolled in public schools and should urge States to give the same emphasis to Indian children.

The recommendation is addressed to the Office of Education which will make appropriate response concerning measures it has taken to implement the recommendation.

With reference to the funding of the educational programs which it operates directly, the Bureau of Indian Affairs believes that an anomalous situation exists to which the Congress should address its attention.

After the passage of the Elementary and Secondary Education Act of 1965, which did not provide for direct participation of the Bureau of Indian Affairs in its benefits, the Bureau, in an effort to secure comparable funding for programs for its disdvantaged students, asked the Bureau of the Budget to include an equivalent amount in its appropriation request. The Bureau of the Budget directed the Bureau to seek this money from the Office of Education. Subsequently, by the passage of Public Law 90-247, BIA schools were included under titles I, II, and III of ESEA. Later, with passage of Public Law 90-34, the BIA was included under the Teacher Corps.

The President, in his message to Congress this year, said, in part, "the legislation enacted in the past 4 years gives us the means to make the special effort now needed in Indian education: The Elementary and Secondary Education Act, the Education Professions Development Act, the Vocational Education Act, and the Higher Education Act. The challenge is to use this legislation creatively. I have directed the Secretary of the Interior and the Secretary of Health, Education, and Welfare to work together to make these programs responsive to the needs of Indians."

BIA schools have not been authorized as participants in the Vocational Education Act or in the Education Professions Development Act. In addition to these, they do not participate directly in the Bilingual Education Act.

Now the Congress has put the Bureau on notice that in fiscal year 1970 it does not intend to appropriate to the Office of Education funds to be transferred to the Bureau of Indian Affairs under the authority of ESEA and that the Bureau should make necessary adjustments in its fiscal year 1970 appropriations request. This development raises questions about BIA participation in other Federal support programs which seem to be clearly relevant to BIA activities. For instance, to further confuse the situation, the BIA has been included under the National Defense Education Act since the appropriation issue was raised last June.

To the extent that these acts provide for the funding of supplemental programs for the Nation's disadvantaged children, and are not to supplant regular operating programs, we believe that Bureau schools should be included in such legislation. Specific cases in point, as mentioned earlier, are the Bilingual Education Act and the Vocational Education Act which do not include Bureau schoolchildren. We respectively invite the assistance of the subcommittee in securing from the Congress a clarification of the situation in order that the BIA may make long-range plans for the education of Indian children and youth for whom it has responsibility.

We strongly recommend the inclusion of the Bureau of Indian Affairs by the Congress, by whatever means it deems appropriate (for example by its designation as a "State"), so that all Indian children may share in the benefits of Federal programs.

4. Education must be viewed as a single, continuing process which ranges from preschool through adulthood. Beignning with preschool experience for all Indian children, the research and development capacity of the appropriate agencies should be strengthened in order to tailor educational programs to the needs of Indian people. Study should be made of the possible application of new educational technologies. Greater attention and support should be given to special education, since there is a high incidence of disability and handicaps among Indian children. Attention should be given to funding experimental programs at universities to assist Indian youth in adjusting to contemporary American society. Consideration should be given to supporting a career for graduate study of the languages, history, and culture of American Indians.

(*a*) With the initiation of approximately 35 kindergarten units in Bureau schools this year and the projection of 35 additional units in Bureau schools and 48 units in public schools as the next increment, educational opportunity for Indian children and youth has been extended from early childhood to adulthood.

(*b*) Within the limitation of funds available, a modest beginning has been made on the development of a research capability within the Division of Education by the establishment of an Office of Research and Evaluation. The need to greatly expand it is recognized. Currently, studies of high school dropout and student progress at the college level are going forward, the achievement patterns of high school students are being studied, and the characteristics of the teaching, supervisory, and paraprofessional staffs have been surveyed.

(*c*) The need for tailoring educational programs to serve the special needs of Indian children has been recognized and served by the establishment and development of a branch of pupil personnel services within the Division of Education, including expertise in the fields of special education, social work, guidance and counseling, and psychological services. This capability is designed to strengthen especially the domiciliary program in boarding schools which enroll a high percentage of disadvantaged youngsters.

(*d*) The curriculum staff has been greately strengthened and imaginative developmental work is going on in the fields of social studies, English as a second language, early childhood education, and art and music. Contracts are in effect with the center for applied linguistics, the University of California at Los Angeles, and the University of Arizona for the development of programs and materials in the English language field. The University of New Mexico and Dr. John Bryde are developing curriculum material in the field of Indian culture.

(*e*) The inservice training of teachers has been strengthened through summer workshops conducted under the aegis of Northern Arizona University and the National Association for the Education of Young Children.

(*f*) Largely with funding from title I of the Elementary and Secondary Education Act, Bureau schools have hired several hundred teacher aids and dormitory aids, most of them of Indian descent and bilingual, not only to relieve professional teachers and guidance workers of routine tasks, but to provide important emotional and learning support to students through use of the native tongue and familiarity with Indian culture.

(*g*) With reference to the application of new educational technologies, one of the prime responsibilities of the Instructional Service Center recently established at Brigham City, Utah, is the evaluation of all relevant educational media. In that connection, for the past 6 years the Intermountain School at Brigham City has been doing experimental and developmental work with an electronic language laboratory in the teaching of English as a second language.

5. Strong support should be given to the BIA objective of moving Indian youngsters out of boarding schools and placing them in community schools on the reservation as soon as this can be done with no reduction in the quality of education.

(*a*) The Bureau of Indian Affairs remains committed to the recommendation, not only because it favors the education of children in the environment of home and community, but also because it believes such schools improve the quality and strengthen the viability of reservation community life.

(*b*) The implementation of the recommendation, however, is almost entirely dependent upon the development of the reservation road system to permit the busing of students to school on a daily basis. The problem is particularly acute as it applies to the Navajo Reservation because of the wide dispersion of the Navajo population across the reservation with the result that approximately 18,000 Navajo children are currently receiving their education in boarding schools. Special concern has been expressed that a large number of young Navajo children are in boarding schools; about 7,800 of the 18,000 are 9 years of age or younger and these represent 91.5 percent of all the Indian children of that age group who are in boarding school.

The Bureau in its long-range planning of a roads program for the Navajo Reservation has taken the position that a roads system must be designed to achieve a balance in all developmental areas, economic, industrial, social, political, and health, as well as education. Nevertheless, because of the focus of attention upon the boarding school question, the Bureau's road engineers during March and April of 1968 surveyed 44 schools on the Navajo Reservation in relation to boarding school children, location of home sites, existing BIA system roads and additional roads needed to serve the greatest number of children. Maps of the geographical area that could be served by each school were used in the study and to record locations. School bus service was based on the requirement that no child ride one way for a period of more than 1 hour, and that the maximum walking distance from home to bus route be 1½ miles.

The basic results of the survey were—

(1) The reconstruction of 688 miles of BIA system roads would enable 3,252 children (1,564 6–9 years of age; 1,688 10 years of age and older) now attending school on a boarding basis to be bused in. This is an average of 4.7 children per mile.

(2) The construction of 1,001 miles of additional roads in the school areas would serve 3,850 children presently in boarding schools (1,861 6–9 years; 1,989 10 years and older). This is an average of 3.8 pupils per mile.

(3) The estimated cost of the above construction of 1,689 miles is $84,450,000.

Such an effort would leave some 11,000 children now enrolled in boarding schools unaccommodated.

It is not practical to plan a road system solely to meet the requirements of school bus routes. The school areas are in isolated locations until the main roads of the entire reservation system are constructed.

In a November 1, 1968, report the Navajo Area Director reported on a recent need survey of the entire road system and of those additional roads proposed including the 1,001 miles listed in item 3 above.

Estimated cost:

System roads	$186,000,000
Additional roads	119,000,000
Total	305,000,000

The Navajo Reservation's share of the $30 million annual authorization in the current Federal-Aid Highway Act is $8.7 million.

(*c*) For those children from disorganized homes, either boarding schools or boarding home care would seem to remain the only feasible answer.

6. Every effort should be made to encourage Indian parents and tribal leaders to assume increasing interest in and responsibility for *the education of Indian children in accordance with the concept of community action. School boards, elected by the community and entrusted with appropriate responsibility for education, should be adopted as standard operating procedure. Specialized training programs should be instituted for board members. Study also should be given to the possibility of making grants directly to Indian groups to administer their own educational systems.*

Considerable effort has been expended to involve Indian people in developing the guidelines to implement the functional operation of local boards both at the advisory and the contractual level. The National Indian Education Advisory Committee has worked closely with the Bureau in the development of these guidelines; likewise, they have been reviewed by personnel in each area office and at a Bureauwide meeting of the directors of Indian education. A workshop has been held in one area involving tribal representatives and a handbook to serve as a guide for training of school board members was developed. A planning session has been held by an ad hoc committee of Indian leaders to develop a weeklong National Indian Workshop on School Affairs to be held in Utah in March of 1969. Reports from each area indicate that nearly all schools have established a school board of some type; Alaska has 99 percent of their schools with a board and they report 85 percent of these are actively involved in management roles. The Navajo area reported 51 of 56 schools with organized school boards involved in performing functions such as assisting to get all children in school, assisting in setting up campus and school regulations, participating in the inspection of school physical plants, disseminating information about school information to the community, and many related functions.

7. Staffing policies and procedures should be reviewed to develop procedures for recruitment and selection to assure employment and retention of the highest quality staff. Positions in education should be alined with the rest of the education profession, e.g., in terms of work year, incentives such as salary, opportunity for continuing education, etc. Consideration should be given to acquiring staff for schools in isolated areas by creating a volunteer or limited assignment category which might increase the likelihood of attracting well-qualified staff committed to working with the Indian child. Programs such as Teacher Corps and VISTA should be fully utilized. The roles of teacher and dormitory aids and other supportive personnel should receive appropriate consideration, particularly as a means of involving the community.

(*a*) The development of the Bureau's teacher recruitment unit at Albuquerque, N. Mex., has gone a long way toward easing the problem of teacher supply. Six full-time recruiters who call on some 400 teacher-training institutions throughout the country recruit approximately 700 new teachers each year to replace those who resign or retire or to staff new classrooms. Last fall for the first time in recent years, Bureau schools opened with a full complement of teachers. There is also general agreement that the quality of teachers has improved.

(*b*) It is now possible for the Bureau to hire teachers who meet the qualification standards in terms of training and experience at an entering grade of GS–9. This has helped to attract quality teachers.

(*c*) The Bureau is in continuing consultation with the Civil Service Commission concerning a revision of working conditions which would permit Bureau teachers to conform more closely to public school teachers with respect to such matters as the length of the school year, working hours, etc.

(*d*) The Teacher Corps is being utilized at several BIA locations on the Navajo Reservation.

(*e*) A program for the training of 20 teaching interns, including 11 Indians, for service in Choctaw schools is being carried on by the University of Southern Mississippi. The training will cover a 2-year period. Internship will be carried out in Bureau schools in Mississippi.

8. A review of vocational education opportunities for Indian young people and adults should be undertaken at both the State and National levels. The most extensive program of vocational education possible should be available to Indians, beginning at the high school level, and should be closely tied to job availability and family mobility. Every Indian who completes high school should have an opportunity for college or additional vocational training.

(*a*) The Bureau's adult vocational training program authorized by Public Law 84–959 provides post-high-school vocational training in accredited private and public schools in 30 States. Currently, the program is funded at a $15 million level and accommodates about 5,000 students annually. All approved courses are geared to the availability of employment for the occupation. Family heads as well as single persons are assisted under this program with tuition, related costs, transportation, subsistence enroute, subsistence during training, medical coverage, job placement, and subsistence until receipt of the first pay check being provided. It is anticipated that the funding of this program will be increased to $25 million (the fund limitation under Public Law 84–959) and student participation increased to about 9,000 annually.

(*b*) Recently there has been established two residential family training centers at Madera, Calif. and Roswell, N. Mex. These centers are designed to assist single persons and primarily, families with lower educational attainment, lower skills, and lower motivation. Entire families are assisted in moving to these centers where all members of the family are engaged in training. Both parents are furnished basic education, vocational training, family life and urban adjustment training, while the children of school age are entered into the local public schools and furnished tutorial services if needed. The preschool children are either furnished Headstart type training or provided nursery and childcare assistance. The vocational skills taught the parents are geared to the availability of employment and job placement with a 1-year follow-up provided. The centers are operated by private industry under contract with the Bureau. These centers have become extremely popular with the Indian people and expansion of them is anticipated.

(*c*) The higher education grant program of the Bureau, including the supplemental appropriation secured in this session of the Congress, now stands at a level of $3 million. A further increase will be requested for fiscal year 1970. Counting summer enrollment, an estimated 2,960 college students will receive help this year. For the first time enrollees in sectarian schools are eligible for help.

(*d*) In three of the boarding schools operated by the Bureau directly, terminal vocational-technical training is being provided to about 1,300 students each year at the post high school level. Prevocational training is a regular part of the training in all Bureau high schools.

(*e*) The Bureau feels that a comprehensive evaluation of its vocational education programs is needed and such a review has a top priority rating as soon as funding can be secured. Discussions are being carried on now with officials of the U.S. Office of Education and the Ford Foundation about possible joint funding of such an effort.

9. Efforts should be accelerated with State departments of education and local school districts to help them prepare to assume increased responsibility for the education of Indian children currently enrolled in BIA schools, in accordance with the BIA's policy of movement toward the public school system.

In every State the American Indian is in a distinct minority when compared with the composition of each State's total population. An all too natural result of this status is the partial eclipse of appropriate emphasis on educational solutions aimed at specific problems relating to such a group.

Recognition of this condition has prompted BIA Indian education leadership to take constructive recuperative steps. The staff of the education division sponsored a conference of chief State school officers to investigate the potential contributions and productivity of expanded joint efforts to focus increased attention and resources on the needs of Indian students enrolled in public schools. This experience has been coordinated with the expansion of BIA field staff charged with the responsibility of helping State and local school systems identify major deterrents to Indian progress in public education and determine courses of corrective action. The result has been increased awareness of the strengths and weaknesses of public education in this area and the development of positive steps to more nearly relate both in-school and community education programs to the needs of Indian students.

The Bureau is also attempting to develop a dissemination capability to help bring both the methods and results of "good practices" to the attention of public school officialdom. The Bureau and a number of local public school systems have analyzed the special educational needs of Indians and prescribed solutions which have established their worth and validity. It is believed that other school systems will adopt many of these procedures if their value can be demonstrated. BIA staff is now attempting to provide the necessary liaison and professional stimulation for this effort. Full realization of these aims and efforts will require expansion of the Johnson-O'Malley program and appropriate increases in funding.

10. The U.S. Office of Education and the BIA should stimulate local school districts to take a more active part in bringing Indian children into their schools. Such a program will require in each community, planning meetings involving Indians, their non-Indian neighbors, local school officials, and representatives of State and Federal Governments. Integrated education should be encouraged. In many cases, however, this will be impossible because of extreme physical isolation.

The Bureau of Indian Affairs has moved to implement this recommendation by employing representatives in the Aberdeen and Albuquerque areas to work with public schools educating Indian children. Others will be added in other areas as funds permit. It is intended that these persons will serve as catalytic agents to bring together Indian parents and tribal, State, Bureau, and local public school officials for the purpose of discussing thoroughly the pros and cons of transfer of Indian students to public school, in specific situations, particularly when it will result in integrated education. Highly successful meetings have been held in North Dakota and South Dakota, bringing together representatives of all concerned groups for consideration of the problem. The community schools in the Aberdeen area, such as the ones at Cheyenne-Eagle Butte and Turtle Mountain (Belcourt) where the BIA and public school districts join in the support of the school, continue to serve as interim models of integration, short of full public school status.

The Bureau remains committed, however, to the principle of "mutual readiness" of the Indian and non-Indian communities for school transfer and to a plebiscite of the Indian community to insure that transfer represents the majority will of the Indian people.

11. A comprehensive study of the educational needs of Indians and the effectiveness of present programs—Federal, State, and local—in meeting these needs should be undertaken.

In an effort to be responsive to this recommendation, the Bureau of Indian Affairs has, for its part, contracted with Abt Associates, Inc., a consulting firm in Cambridge, Mass., for a study of its educational programs. Specifically, Abt Associates will develop models for:

(*a*) Systems analysis, planning and budgeting;
(*b*) Cost effectiveness studies;
(*c*) A management information system.

These, it is believed, will give the Bureau's Education Division managerial tools which will enable it to make better program decisions in terms of reaching its education goals.

The National Study of Indian Education, which is being directed by Dr. Robert J. Havighurst of the University of Chicago, is being funded by the Office of Education. That agency will provide information about the study. The Bureau of Indian Affairs, however, is supportive of the study and has worked closely with Office of Education representatives and Dr. Havighurst and his colleagues in implementing it.

12. Ways should be explored to encourage development of junior or community colleges on or near the larger reservations to facilitate opportunities for larger numbers of Indian children to receive higher education. A central criterion in establishing such a school should be attendance by non-Indian as well as Indian children.

The Bureau is interested in experimenting with one or more preparatory schools with an academic orientation and emphasis. Operating on the basis of six trimesters over a 2-year period, these schools would be designed to facilitate the transition of Indian high school graduates to college programs leading to the baccalaureate degree. They would concentrate on special need areas of Indian students, including communication skills, science and mathematics, and an understanding of cultural differences. We agree that they should be open to attendance by non-Indians.

The Bureau notes with interest the plans of the Navaho Tribe to launch a community college on the reservation and has supported the project to the extent of making available physical facilities for it, temporarily, at the new Many Farms High School pending the tribe's securing a permanent plant.

13. The BIA authorization for titles I, II, and III of the Elementary and Secondary Education Act should be extended beyond the present expiration date of June 30, 1967, and made consistent with the timing of the balance of the act.

The Congress did extend the authorization as recommended. Our position with respect to BIA participation in ESEA and other Federal programs for disadvantaged children has been dealt with in response to recommendation No. 3.

14. Public Law 81–815 should be amended to liberalize the provision for construction of public school facilities in areas with concentrations of Indian children.

Public Law 81–815 is administered by the Office of Education which will report on the progress of efforts to liberalize the program.

H. The American Indian and the Bureau of Indian Affairs—1969

A Study, With Recommendations, by Alvin M. Josephy, Jr.,
February 11, 1969 (Excerpt)*

IV. POSITIONING INDIAN AFFAIRS IN THE FEDERAL GOVERNMENT

This study now addresses itself to specific recommendations for a course upon which to embark in 1969, including:

The positioning of the administration of Indian affairs within the Government;

The reorganization of the BIA's structure;

Programmatic approaches.

This section concerns the first of those items.

Much thought, time, and energy have been expended in the past in trying to determine where best to place the administration of Indian affairs within the executive branch of the Government. The fund for the Republic report in 1961 examined proposals "to improve the administration of Indian affairs" that included abolishing the BIA entirely, with no substitute; transferring it entirely to HEW; spreading its functions among other Federal departments and bureaus (law and order to Justice, forestry to Agriculture, etc.); creating an independent Indian Authority like TVA; or transferring responsibility to the States (termination). It decided that the best answer was to keep the BIA where it was in Interior, with the Bureau "assuming somewhat altered responsibilities and functions. The Bureau has the decided advantage of being already in the field," the report added. "It needs only revision and redirection to accomplish the purposes with the present-day situation of the Indian demands." (The Bureau stayed in Interior, but, as we have seen, was not revised or redirected.)

In 1966 an HEW-Interior interdepartmental committee turned down a proposal to transfer the BIA's educational function to HEW, as noted in the previous section. The BIA's health function had been transferred to the Public Health Service in HEW in 1955, but the circumstances were different. The Public Health Service had an established, operating and highly professional apparatus that could accommodate itself to enfolding a division of Indian health; there was no established school structure or experience in operating a school system in HEW's Office of Education.

Nevertheless, in 1966, too, the Presidential task force, as also related, made a strong proposal to transfer Indian affairs in toto from the Interior Department, whose programs emphasized conservation and natural resources, to Health, Education, and Welfare, whose programs were concerned essentially with human development. The functions of the BIA were not to be scattered among the various branches of HEW, but were to "be transferred to a single new agency" in that Department, with a "direct reporting channel in the Secretary, probably through an Administrator for Indian Affairs." An important point, not articulated by the task force's report, but obvious to many of its readers, including the leadership of the House Interior and Insular Affairs Committee, whose opposition to the proposed transfer went far to bury the entire report, was that the separation of the Indians from the Interior Department implied, as well, the transfer of Indian affairs to other committees in Congress and to other sections of the Bureau of the Budget. This may, indeed, have been a motive of the task force, for the Interior Committees of Congress and the Interior section of the Bureau of the Budget, no less than the Department of the Interior, are also oriented primarily toward natural resources rather than human development.

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*The complete text of this study appears in the subcommittee hearings, 1969, vol. 2, p. 1421.

Following the shelving of the Presidential task force's report, the interagency task force recommended keeping the Bureau of Indian Affairs in the Department of the Interior, but placing it under a new "people oriented" Assistant Secretary of the Interior for Indian and Territorial Affairs. This was not accepted by the White House, and in January 1969, Indian leadership, through the National Congress of American Indians, proposed to the new administration the establishment of the Bureau as an independent commission or agency.

The primary urgency in Indian affairs facing the new administration in 1969 is the reorganization of the present Bureau of Indian Affairs, as stated in the previous section. How to accomplish that most smoothly and effectively to assist the Indians must determine where the administration of Indian affairs is to be positioned.

> *This study recommends that a meaningful and determined reorganization of the administration of Indian affairs, together with the providing of an effective administration thrust to go forward to the opportunities of tomorrow and not simply solve the problems of yesterday, can only be accomplished by moving the Bureau of Indian Affairs to the Executive Office of the Presidency, for the objectives of Indian affairs in 1969 require nothing less than the priority, mandate, and visibility which the President himself can give them.*
>
> *It is further recommended that the terms "Bureau" and "Commissioner," in connection with Indian affairs be recognized as outmoded, and that, with the move, the Bureau's name be changed to the Office of Indian Affairs or Indian Services or Indian Development, or to the Indian Services Administration, (etc.), and that the title of the present Commissioner be changed to Administrator.*

The principal argument for this recommended move is stated in the proposal above, but a strong supporting argument can be made that the eye and watchfulness of neither the Department of the Interior nor the Department of Health, Education, and Welfare (should the Bureau be moved there) are strong enough to enforce the thoroughgoing prescription for improvement which the Bureau and its conduct of Indian affairs require. The form, in short, will change, but the effectiveness of application will still be less than what is needed. The effect on the Indians themselves should not be underestimated.

The proposal is in line with the President's own concern for the problems of minority peoples, but, in addition, the transfer would convey to the Indians his determination to place their affairs on the highest level of governmental commitment possible and to bring to an end the problems that for so long have made them the "poorest of all poor" Americans. In proposing an independent commission or agency, the Indians were striving to extricate themselves from a submerged and unjustly competitive position in the Interior Department. A wholesale move of the Bureau to HEW would not necessarily improve their competitive position, and undoubtedly would result in generating shock waves of termination fears that would renew resistance to programs and again retard development. The transfer of the Bureau to the Executive Office of the Presidency, on the other hand, accompanied by a reorganization of the agency's structure, the resultant ending of some of the worst practices of patronage now felt particularly at the area level, and the moving of Indian affairs to other congressional committees and another section of the Bureau of the Budget, would inevitably provide a dramatic stimulus to Indian self-confidence and an inspiration to the invigoration of Indian initiative, motivation, and energy.

The other options, though less desirable, should be mentioned:

(1) The Bureau can remain in the Department of the Interior and be reorganized along the lines proposed in the next section of this study. If that occurs, the relationship of the Bureau to the rest of the Department must be changed. The Bureau is presently under the Assistant Secretary for Public Land Management, and receives short shrift both from him and from the Secretary, who are more preoccupied inevitably with questions of natural resources. Delays are frequent, and negativism, stemming from the long delays in getting decisions from both officials, emanates back to the Bureau from the Assistant Secretary's administrative assistant, whose personal power of influence in Indian affairs is not generally recognized. At the same time, the ability of the Secretary to play a decisive role in Indian affairs is weakened when he goes through the Assistant Secretary for Public Land Management to the Commissioner, of Indian Affairs. The record of the last two administrations was one of continued poor communications and "slippage" between the Secretary and the Bureau. On many occasions, the Secretary gave orders, only to discover months later that nothing had been done, or, in some cases, that the exact opposite of what he had requested had taken place. As President Truman once pointed out, this is a fact of Government life, but it is a grave and often crippling flaw in the conduct of Indian affairs and will be a disadvantage in any attempt to carry out a meaningful reorganization of the Bureau of Indian Affairs within the present structure of the Department.

> *It is recommended, therefore, at the very least, that if the Bureau remains in the Department of the Interior, it should be placed under an Assistant Secretary for Indian and Territorial Affairs, who can give the proper attention to decisionmaking at the topmost level of the Department.*

At the same time, delays occasioned by the Solicitor's Office of the Department must be ended. This is an administrative matter, and the

Secretary himself ought to address his attention to the problem and find the methods to correct it as promptly as possible.

(2) The primary responsibility for Indian affairs can be transferred to the Department of Health, Education, and Welfare. If this is to be done, a rereading of the first two sections of this study is recommended. A deliberate and careful effort will have to be made to win the Indians' understanding and agreement. The fears of termination will have to be recognized, and the Indians will have to be persuaded that their concern, not alone about termination, but that they will be submerged and placed in a disadvantageously competitive position for services with non-Indians who greatly outnumber them, is genuinely groundless. It is questionable whether this can be guaranteed, and whether competition for programs and funding, as well as a deterioration in the recognition of the uniqueness and spacial position of the Indians, will not create new areas of conflicts and problems.

If the move to HEW is made, all the functions of the BIA, including education, should be transferred to a single new agency under an Assistant Secretary or, at a minimum, an Administrator for Indian Affairs, in that Department. Practical as it may seem to the non-Indian unfamiliar with Indians, a scattering of the functions through the different branches of HEW and/or to other agencies should not occur. The shock to the tribes would be enormous, and Indian progress would come to a halt. Instead, the single new agency in HEW should be structured along the lines recommended in the next section, and its positioning in the Government made thoroughly familiar to the Indians as soon as possible.

Notice should be taken of the Indians' reflection of fears of disorienting moves which they registered through the National Congress of American Indians in January 1969, when they stated: "Indian people have *never* been successful in competing for services through other Government agencies, and the services received from these agencies have been very small or practically nil * * * Politically and socially, it is almost impossible for the Indian to compete for services among other Federal agencies * * *"

Finally, if Bureau restructuring is done effectively, it can be done as well in Interior as in HEW. Funding for the Indian agency may come easier and with more largesse in HEW than in Interior and liaison with nearby specialized human development branches in HEW may be more effective and helpful than the long-range liaison now required between the BIA and certain branches in other agencies. But there is no necessity that requires the BIA to continue either with inadequate budgets or with inefficient liaison with other agencies simply because it is in Interior. The lack of commitment of previous administrations permitted the persistence of underfunding of Indian programs and inefficient interagency liaison, and, partly as a result of both, the legacy of Indian neglect continues to be a shameful blot in 1969.

(3) The remaining option is to find the means to create an independent agency or commission, not in the Executive Office of the Presidency. This would not have the impact or commitment which Indian affairs truly require in 1969, but it would extricate the Indians from old adversaries in Congress and the Bureau of the Budget, would

raise them from their present submerged position in a Department oriented toward non-Indian matters, and might place them in a better competitive position for Government services available to all Americans. The proposal has never been thought out, and if it is to be pursued, full and frank discussions regarding all its ramifications should be conducted between the National Council on Indian Opportunity and the Indians who offered the proposal.

The future positioning with the Government of the five-member Indian Arts and Crafts Board, whose budget is included within that of BIA, but which reports directly to the Secretary of the Interior, rather than the Commissioner of Indian Affairs, should be determined after a decision is made about the future location of the BIA. If the BIA is transferred to the Executive Office of the President or to HEW, it could continue to carry the budget of the Arts and Crafts Board, but the Board itself, which has proved a case for being independent of the Commissioner, should be consulted for its advice concerning the officer in Government to whom it should report.

V. THE BUREAU OF INDIAN AFFAIRS

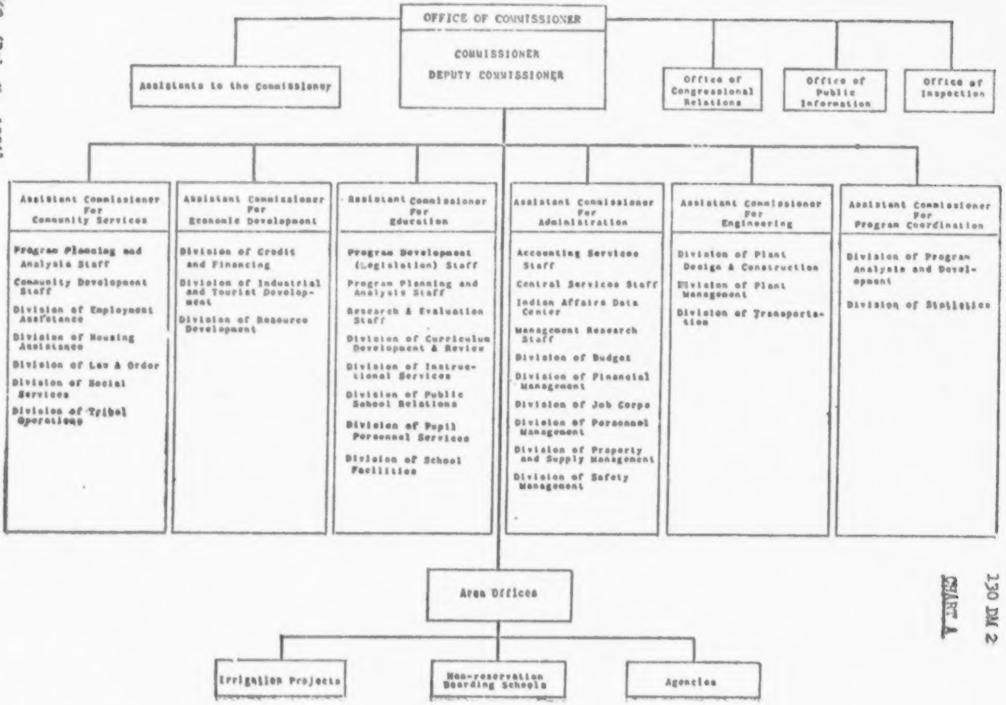
The Bureau of Indian Affairs was created in the War Department in 1824 and in 1849 was transferred to the Department of the Interior. It is organized today on three levels, or echelons, that are vertically segmented by numerous divisions grouped, according to functions, into offices.

The headquarters in Washington, with about 500 of the Bureau's total 16,035 full-time employees in fiscal year 1968, consists of the Office of the Commissioner (with a Deputy Commissioner, Assistants to the Commissioner, and Offices of Congressional Relations, Public Information and Inspection); three program Offices (Community Services, Economic Development, and Education), each under an Assistant Commissioner; and three supporting staff Offices (Administration, Engineering, and Program Coordination), each also headed by an Assistant Commissioner. The three program Offices and three supporting staff Offices each contain staff sections and a varied number of divisions, which heavily compartmentalize the echelon and have line authority over counterparts that similarly compartmentalize each of the other two echelons. (See attached charts A and B, showing present Bureau structure).

The intermediate level, or echelon, is that of the area offices (11 at the time of this writing), which have broad delegations of authority as well as supervisory responsibility over the agencies and field installations (the third echelon) in their areas. The area offices are headed by directors, and the echelon, as noted, is also segmented into area counterparts of the many divisions (also known as branches) of the six program and staff Offices in Washington. Area branch officers, headed by Area Assistant Directors, who are subject to their Divisions and Offices in Washington, have authority, in turn, over counterparts in the third echelon, who are grouped around, but are not responsible to, the reservation, or agency, superintendent. Besides the reservations, the schools and other installations on the reservations, the third echelon includes off-reservation boarding schools and independent irrigation projects administered by the Bureau.

CHART A

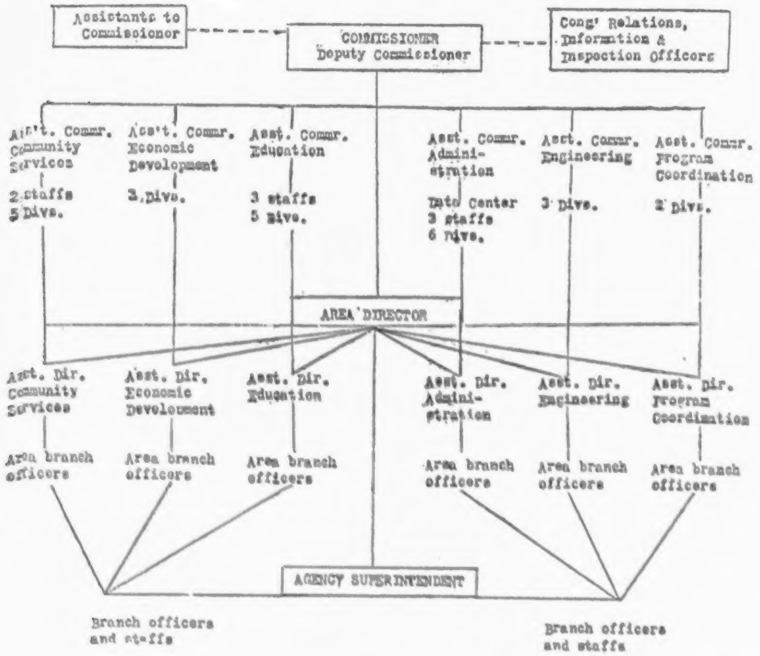
ORGANIZATION-BUREAU OF INDIAN AFFAIRS


OFFICE OF COMMISSIONER
COMMISSIONER
DEPUTY COMMISSIONER
Assistants to the Commissioner
Office of Congressional Relations
Office of Public Information
Office of Inspection
Assistant Commissioner For Community Services
Program Planning and Analysis Staff
Community Development Staff
Division of Employment Assistance
Division of Housing Assistance
Division of Law & Order
Division of Social Services
Division of Tribal Operations
Assistant Commissioner For Economic Development
Division of Credit and Financing
Division of Industrial and Tourist Development
Division of Resource Development
Assistant Commissioner For Education
Program Development (Legislation) Staff
Program Planning and Analysis Staff
Research & Evaluation Staff
Division of Curriculum Development & Review
Division of Instructional Services
Division of Public School Relations
Division of Pupil Personnel Services
Division of School Facilities
Assistant Commissioner For Administration
Accounting Services Staff
Central Services Staff
Indian Affairs Data Center
Management Research Staff
Division of Budget
Division of Financial Management
Division of Job Corps
Division of Personnel Management
Division of Property and Supply Management
Division of Safety Management
Assistant Commissioner For Engineering
Division of Plant Design & Construction
Division of Plant Management
Division of Transportation
Assistant Commissioner For Program Coordination
Division of Program Analysis and Development
Division of Statistics
Area Offices
Irrigation Projects
Non-reservation Boarding Schools
Agencies

11/21/68 (Rel. No. 1086)
Replaces 12/6/67 (Rel. No. 993) and 2/16/68 (Rel. No. 1017)

CHART B

PRESENT STRUCTURE OF THE BUREAU OF INDIAN AFFAIRS


Assistants to Commissioner
COMMISSIONER
Deputy Commissioner
Cong' Relations, Information & Inspection Officers
Ass't. Commr. Community Services
2 staffs
5 Divs.
Ass't. Commr. Economic Development
3 Divs.
Asst. Commr. Education
3 staffs
5 Divs.
Asst. Commr. Admini-stration
Data Center
3 staffs
6 Divs.
Asst. Commr. Engineering
3 Divs.
Asst. Commr. Program Coordination
2 Divs.
AREA DIRECTOR
Asst. Dir. Community Services
Asst. Dir. Economic Development
Asst. Dir. Education
Asst. Dir. Admini-stration
Asst. Dir. Engineering
Asst. Dir. Program Coordination
Area branch officers
Area branch officers
Area branch officers
Area branch officers
Area branch officers
Area branch officers
AGENCY SUPERINTENDENT
Branch officers and staffs
Branch officers and staffs

In fiscal year 1968, more than 9,000 of the Bureau's personnel and $138.2 million (55 percent of the Bureau's $250 million budget) went into the education function. HEW's Division of Public Health employed 5,740 people for Indian health services, with a $91.3 million appropriation. Thus two-thirds of the personnel and funds expended on Indian affairs that year by the principally involved agencies went into education and health services. (The total funds appropriated for the Bureau of Indian Affairs in fiscal year 1969 were $258.2 million; the amount requested in the Budget for fiscal year 1970 by the Bureau is $289.1 million, which primarily reflects a $14 million increase for education and a $20 million increase for adult vocational training, certain cuts being made in other items, chiefly the construction of buildings and utilities.)

It may be argued that the decentralized structure of the Bureau, as outlined above and seen on the accompanying charts A and B, is necessary for good management. But, in practice, it is management for checks, balances, caution, resistance and delays, and not for decisiveness and action. The "layering" and compartmentalizing, which require actions moving up and down to go sideways also, back and forth, on each layer, result inevitably in slowness, frustrations, and negativism, as well as a continuing Niagara of studies, assessments, opinions and reports. The Bureau in consequence is literally drowned in paperwork, while on the reservation level the Indians wait.

This cannot be, and is not, good management. In December, 1968, Leon Ovsiew, professor of educational administration at Temple University, analyzed the administrative structure, budgeting practices and certain personnel factors of the Bureau of Indian Affairs, as they pertain to the education function, for the Senate Subcommittee on Indian Education. His study was so perceptive in pointing out the root causes of the Bureau's structural defects that, although his report referred primarily to the educational function of the Bureau, certain excerpts from it, with the alteration of a few words, should be read and re-read as being relevant to the Bureau as a whole:

"The primary characteristic of a viable (Bureau organizational structure) is that leadership efforts should be both encouraged and rewarded. Though no one would be naive enough to believe that any structure alone can make leadership flourish, it is nevertheless true that structure can frustrate leadership. A good structure can do more: it can encourage good people with ideas to cast their fate with the organization for the rewards of accomplishment. In any event, if a structure actually hinders the exercise of leadership, it needs changing to a structure which encourages it. No principle of organization can be more certain.

"How does the present BIA structure constrain and impede the exercise of leadership? By the quite simple process of making every idea, every experimental hypothesis, every possible adaptive change (and every programatic or other action for decision) run the gauntlet of (area branch personnel, a general area director. Washington division personnel, and an assistant commissioner, all of whom possess authority over the specific reservation matter in question) and whose short budgets and spending leeways make new ideas less attractive than the non-postponable functions. Forced to use an influence pattern for getting whatever consideration of their change-ideas they can, officials (wishing to move things along) must learn to lose more often than they win, and especially to lose the big ideas. It takes only a little empathy to understand the frustration this perception causes for people who know that little ideas can never hope to win the battle against the inadequacies * * *

"There is another, more subtle point about the uses of a decentralized structure. In theory, a major advantage of decentralization is that it permits a freerer exercise of political democracy. Opportunities exist when administrative decisions are made close to the point of their implementation for the people affected by them to affect the decisions * * * It would be satisfying to be able to note that such an advantage adheres in the BIA administrative structure. But the route upward through the echelons seems to be no less difficult than downward for personnel, at least on the things that matter most. The BIA philosophy of organization derogates the (grassroots Indians, specialists and coordinating administrator in favor of echelons of administrators and absentee specialists higher up).

"The BIA structure is designed more than most for stability. It is doubtful that very much could be done with or to the people in the organization, given the present structure, to encourage innovative practice * * * One thing does seem for certain: the present structure not only serves to reward unaggressive behavior and docility but punishes, usually by transfer, those who persist in behaving like leaders. The reward system of BIA discourages leadership, on purpose. *It is, therefore, not possible to conceive of change and improvement within the present structure.*" (Italics added.) These findings, to repeat, were addressed primarily to the organization of the Bureau's educational system, but they apply with equal vividness to the Bureau's entire structure. On the reservation level, where Indians are trying to participate constructively to help frame, design and execute programs to meet their problems, they are hamstrung and frustrated daily by an endless round of delays and negativism occasioned by the internal workings of the higher echelons of the Bureau. The effect is that the Indians cannot participate in making decisions for themselves, for in meaningful things, the decisions cannot be made at their level. Government protestations in support of the principle of self-determination notwithstanding, the important decisions must be, and are made—under the present arrangement—in the echelons above the Indians.

Such a system, as noted, defeats the personnel within the system. There are undoubtedly weak, poor, and inefficient men within the Bureau. Some enter the system, especially at the area level, by patronage; some should never have been employed by the Bureau; some are poor because of inadequate training and orientation after they were employed: and some were good originally but, after many frustrations and defeats, gave up. The Office of Inspection in the Commissioner's Office, which is charged with the obligation to "identify and correct any operational weakness which might reflect upon the efficiency or integrity of the Bureau," gives little evidence of ability or determination to carry out its mission. One of the scores of "weaknesses," with which it appears unable to cope, is the continued presence within the Bureau of key personnel who long since should have been removed from it. The Commissioners themselves should bear a large portion of the blame for not having found the means by which to remove inadequate personnel. Indian children are being emotionally disabled for life by the ignorance of unfit people in the Bureau's educational system. Many members of Indian communities are driven to desperation, some even to suicide, as a result of ineptitude, indifference or lethargy on the part of a poor superintendent or area official. Yet the record of the 1960's contains documentation of Commissioner Nash turning down Indian appeals to relieve them of intolerable agency personnel by telling them that he would not remove a man while he was under fire, and of Commissioner Bennett answering tribal complaints of frustration and negativism with the retort that he was not interested in discussing "criticism of the BIA." The self-evident fact that the Commissioner and the Office of Inspection have not acted determinedly in this matter is an added reason for transferring the Bureau to the Executive Office of the Presidency, where some of the unspoken forces that presently account for the Commissioner's inhibitions, including the pressure of patronage demands and the rigid dicta of Civil Service—neither of which should be viewed as anything but evil when the lives and health of American citizens, and especially children, are at stake—can be better dealt with.

At the same time, it should be recognized that the Bureau contains many more persons with exceptional ability and talent and a high degree of dedication, when the Indians criticize them, they are, in truth, criticizing a structure that binds and frustrates its personnel. That such persons remain in the Bureau and continue to do their best is a testament to the intensity of their commitment. "Many, many inspired people in the service have lived in hope, and died in despair, trying their level best to help the Indian people take their rightful place in America," it will be recalled that W. W. Keeler told Secretary Udall in 1961, when his task force was about to begin its work.

Neither that task force, nor any of those that followed it, made the proposal which this study now believes is mandatory, namely that:

> *Wherever the present Bureau of Indian Affairs is positioned within the government, its structure must be thoroughly reorganized.*

The form of that reorganization must satisfy two principal goals: (*a*) it must end the Bureau's present defects that have been noted above; and (*b*) it must achieve the transfer of a maximum of technical services, facilities and decisionmaking capabilities to the reservation level, face-to-face with the Indians.

At the present time, a decision for a meaningful proposal that originates after a meeting between the Indians and a branch officer on the reservation faces a long, torturous route: from the branch officer to the agency superintendent to the area branch officer to the area assistant director to the area director to the division in Washington to the Assistant Commissioner to the Commissioner, and perhaps higher still. Eventually, it starts down again, following the same zigzag route. Even this is a simplified version, for it may be sidetracked at any step along the way into the offices of other branches and to solicitors.

The recommendations made to the Commissioner of Indian Affairs during the self-examination of the Bureau in 1965–66 and those that were made in January, 1969, by the National Congress of American Indians rejected an experienced, reservation-based awareness of why things happened as they did. The malpractices that they were intended to correct were many, but one example will suffice. In the budget process, each agency, in theory, prepares its own budget, which is then evaluated by the area office and consolidated into an area budget, then submitted to the Washington office for similar evaluation and consolidation. In practice, guidelines based upon previous budgets are determined in Washington, and allocations are actually dictated and controlled by the Divisions as entities rather than by the agencies at the operational level. For example, if a superintendent decides that the budget of one branch on his reservation should be cut and another increased in order to serve a tribe more effectively, the offended branch sends word up through the line to its Division chief in Washington, who then informs the superintendent that if his branch does not need the money in his agency, it will be transferred within the same branch to another agency. Under this system, considerable time and energy that should be spent on service at the operational level are expended in conflicts between the Division hierarchies on the one hand, and the superintendents and area directors on the other. At the same time, the system often results in the presence on reservations of branch specialists who are not needed and, conversely, of not enough personnel or funding for branches that are badly needed. No wonder the National Congress of American Indians asked for the granting of veto power to tribal governing bodies during the local agency budget submitted process and "the reorganization of agencies to change the present structure, which calls for an agency branch to complement every Washington branch chief, whether or not it is needed on a particular reservation, and to include an effective combination of facilities and services for that reservation"!

> *It is recommended, therefore, that the reorganization of the structure of the Bureau follow the form of the attached chart C. Its principal proposals, some of which, though recommended in the past with good reason, have up to now been ignored and should no longer be thrust aside, include:*
>
> > *The elimination of the Offices of the Assistant Commissioners for Community Services and Economic Development, together with all the staffs and Divisions in those offices;*
> >
> > *The readjustment of the present Offices of the Assistant Commissioners for Administration, Engineering and Program Coordination as guidance, coordinator, budgeting, and administration and management arms of the Bureau, reporting to the Commissioner;*
> >
> > *A separate structure for the Assistant Commissioner for Education who would report to the Commissioner, but would retain his present staffs and Divisions, and would have direct line authority to all elements of the educational system as well as coordinators with area and agency programs, tribes, and State and local school systems;*

The addition of regional coordinating desk officers, reporting to the Commissioner, but without line authority;

The addition of an Office of Urban Indian Affairs, concerned with the problems of urban Indians and reporting to the Commissioner;

The retention of area offices headed by Assistant Commissioners, but the elimination of all branches at the area level and the reorientation of the area office's function to that of providing guidance, advice, and assistance to reservations; and

The focusing of primary operational attention on the reservations by placing all specialists, save those in education, on the reservation and giving the superintendent authority over them and their budgeting, and a direct line via the area Assistant Commissioner to the Office of the Commissioner.

This system would eliminate all but one of the conflicting branch hierarchies and give the agency superintendent the line authority, responsibility and flexibility essential for effective operations at the service level. Changing the title of Area Director to Assistant Commissioner for a given area would enhance the line of authority from the Commissioner to the operational level and would discourage the additional interposition at the Washington office of line officers between the Commissioner and the field. (The miscellaneous agencies now reporting direct to Washington should be assigned to an Assistant Commissioner for the East and Southeast, and the Mississippi Choctaw Agency should probably be transferred to this jurisdiction).

> (NOTE: The titles Commissioner and Assistant Commissioner, used herein, should be changed eventually, as previously recommended, to Administrator and Assistant Administrator.)

Regional desk officers in the Commissioner's office would have no line authority. Their function would be to keep abreast of programs and developments in the field, area by area, thus serving the Commissioner as a constantly available source of coordinated information on relative progress among the areas, as well as providing background for evaluating new developments.

The retention of an Assistant Commissioner for Education and the transfer of the school system and other education services, as well as the Institute of American Indian Arts, which now reports to the Commissioner's Office, to his separate line of authority must have high-priority attention. It will provide for the first time the structure needed to reform the Indian educational system and allow the unified planning of policies and the execution of professionally planned programs. It will permit the establishment of uniform educational standards and a unified administration of them. At the same time, it will relieve the superintendents and areas director of extremely burdensome administrative problems relating to the Bureau schools, educational services and public school relations, for which they have no professional training, and will permit them to concentrate on tribal development programs. Potential hazards that might stem from this separation can be met by giving the Assistant Commissioner coordinators with area and agency programs, and the Area Assistant Commissioners and agency superintendents education liaison officers, as indicated.

The assignment at the area level of technicians and survey teams, as also indicated, would help to solve the problem of permanent staffs of technicians who languish at agencies where their services are only seasonally or temporarily needed (i.e., foresters). Buildings and their maintenance could be taken over by the tribes under contract (this is already being done in at least one area), needed new buildings could be supplied by the tribes, working through GSA, using money borrowed on the basis of long-term rental contracts. (Consideration should be given as to whether the agencies should retain the authority for making such arrangements for school buildings, as well as other Bureau plants.)

This reorganization is long overdue, and there will be an understandable tendency to resist carrying it out now, or to go at it gingerly in bits and pieces that may bring more harm than good. An improvement in the conduct of Indian affairs and an acceleration of Indian development rest almost entirely on a reorganization such as this one, however, even though it may be viewed as an impolitic answer and may mean the elimination of jobs that are found to be unnecessary. There will be no time like the present to accomplish the task, and when it is undertaken, it should occur under a vigorous and determined Commissioner with a mandate from the President.

On the reservations, the reorganization will bring about a new set of relations. The Indians will truly be encouraged to work up programs for themselves with the cooperation of the superintendent and the aid of specialists. They will be in a new position, one in which they will be able to play a decisive role in the framing of the agency budget, based entirely on reservation needs, and to submit the budget for review and coordination in Washington, as they have wished. The layering and compartmentalizing that now deadens initiative and energies on the reservations will have disappeared, and the Indians, in fact, will have been unfettered.

In addition to Bureau reorganization, the following recommendations are also made:

> *The National Council on Indian Opportunity, which has already proved its value, should be continued, with its present functions adequately funded;*
>
> *Training programs, and adequate orientation seminars in Indian (and tribal) history and cultures, should be set up and carried out systematically for Bureau personnel who work at every level of the Bureau;*
>
> *Superintendents, area heads, and the new Office concerned with urban Indian affairs should be directed to seek from the tribes and Indian communities the most effective methods by which information about government programs can be communicated to the individual Indians.* A crippling problem on many reservations, as well as off reservations, is that many Indians do not know what programs are available to them (for education, welfare, economic development, etc.) and do not know how to go about getting help

that they need and that actually could be given to them. It should be a prime function of the Information Office of the Bureau to get such information to the entire Indian population and, with the help of the Indans themselves and the field officers of the BIA, arrive at the most effective ways to circulate that information with maximum "reader impact." For instance, the radio and television media might be used more effectively than they are now.

Contracts with tribes must be accomplished by improved payment procedures, a continuity of planning and programing, the ending of unnecessary supervision and requirements, the provision of necessary working capital and equipment, and an agreement that tribes should receive a fair return, not be required to pay substandard wages, and be offered projects that will require them to develop their own staffs of skilled personnel. In this regard, it should be noted that some tribes badly need the means by which they can hire permanent employees (i.e., a tribal business manager or executive secretary) to provide a continuity of development and to service programs This lack of continuity in some tribal governments has been another obstacle to the growth of initiative and to economic development. It would be a breakthrough if budgeting could provide for the tribal hiring of the Indians' own needed technical or professional employees. Priority might be given for one such employee apiece to be provided to those small and impoverished tribal groups that have been so completely stymied by this lack.

Attention should be given, and steps taken, to end the Bureau's deficiencies in the field of research and development; in the lack of meaningful and adequate data on Indians and Indian affairs; in the use of consultants and non-government experts; and in the modernization of its administrative, fiscal, recordkeeping, and other management practices.

Indian Affairs should be headed by an Indian, but he should possess all the qualities of dedication, determination, knowledge and vigor that the leadership of the Federal conduct of Indian affairs now requires. Indians should also be placed in as many policy and decisionmaking positions within the Bureau as possible. Moreover, if the Bureau is kept within the Department of the Interior, the Secretary should have an Indian staff assistant primarily responsible for liaison with the new Assistant Secretary for Indian and Territorial Affairs, the BIA, and Indian affairs generally.

VI. PROGRAMATIC RECOMMENDATIONS

It is certain that the worst problems afflicting American Indians will never be ended without programs that are adequately funded. It is accepted that the Indians do not have the funds themselves and that they do not have access to the sources of credit that are usually available to other Americans. But the actual funding of programs for Indians by the Government has never approached the level required by the massive dimensions of the problems.

A few of the facts obscured by the promulgation of intentions in President Johnson's message on Indian Affairs on March 6, 1968, underscore the point. The message conveyed proposals for many new or expanded programs which, somehow, were to be financed by only a 10-percent increase in Federal expenditures for Indians above the appropriations of the previous year. One of the proposals was for a 10-percent increase in funds for health programs, including a number of items that would make available to the Indians greater numbers of trained personnel to help cope with the many serious health problems on the reservations. Before the year was over, the exact opposite had come to pass, and the Public Health Service was pointing out that, under section 201 of the Revenue and Expenditure Control Act of 1968, Public Law 90–364, the Division of Indian Health was facing a reduction of almost 1,000 employees, or one-sixth of its total staff, principally among nursing personnel and other patient care supportive staff in the field. A reduction in staff is now occurring on reservations and in Indian hospitals, not only nullifying the promise held out in President Johnson's message, but bringing a new crisis to the Indians. (Corrective legislation, it hardly needs pointing out, is required at the earliest possible moment.)

Again, the inadequacy of funding a program to deal effectively with another pressing problem is evidenced in the field of Indian housing. The Presidential Task Force had reported to the White House that at least three-quarters of all Indian houses on reservations were below minimum standard of decency and that over a 10-year period roughly 100,000 units, "of which approximately 80,000 are new, would have to be provided for the housing needs of the Indian population." The President's response to the task force's assertion that this would require a 10-year program costing approximately $1 billion was to propose an increase of only 1,000 new Indian homes (for a total of 2,500) to be built under HUD programs in fiscal year 1969.

The American taxpayer may wonder with increasing impatience why Indian problems are not solved, and why expenditures for those problems continue to mount each year. One demonstrable answer is that the expenditures have never been high enough to do much more than keep the problems going. In the years after the Indians' pacification, the appropriations barely met the minimum subsistence needs of the Indians. In more recent years, with an increasing Indian population and a growing complexity of reservation problems, the appropriations have risen, but consistently have stayed well below a level needed to carry out intentions. It may be impossible, because of higher priority needs elsewhere in the Federal budget and the consequent requirement for economy in the Indian budget, to attempt to solve the Indians' problems once and for all with the same kind of massive appropriations that have characterized the most ambitious aid programs for some of the underdeveloped peoples overseas. But it should be emphasized that the Indians are Americans, and that until a similar approach is adopted for them, Indian programs will continue to limp along, and Indian development will proceed at an unsatisfactory pace. In addition, because of the rapid increase in the Indians' population, there is every prospect that their economic, educational and health levels will drop steadily behind those of the rest of the population, and that each administration will leave the Indians worse off, in relation to the rest of the American people, than it found them.

Adequate funding, therefore, should be a major concern of every Indian program.

During the 1960's, as noted in section III of this study, numerous programs were proposed for every phase of Indian development. They reflected long and expert consideration, and the best of them in each field cannot be improved upon by this study. Some guidelines and suggestions, however, concerning their reevaluation can be proposed at this time, with the added observation that the most realistic proposals and approaches for programs in the future should, and undoubtedly will, originate at the reservation level, and not in Washington.

This study believes that the best and most comprehensive programmatic approach to Indian affairs today is contained in the Report of the Presidential Task Force in 1966, and that its program recommendations should be exhumed and considered.

The principal need of the Indians is jobs, which will break the cycle of poverty and encourage Indian self-confidence. But "the first step in any program concerned with training and employment of Indians," the task force pointed out, was a vastly improved Indian educational system.

The Task Force's educational recommendations, as reiterated in other reports noted in section III of this study, and supported by the reorganization of the Bureau's educational structure as recommended in section V of this study, should be carried out. In addition, the Bureau's Educational Division should establish and fund a Cultural Institute in Alaska, modeled after the Institute of American Indian Arts in Santa Fe, for Native children in Alaska, as recommended by the Indian Arts and Crafts Board to the Secretary of the Interior in 1968.

With regard to economic development, the goal of reservation programs should be the establishment of reservations as viable economic bases for the growth of healthy, self-governing, self-sustaining Indian communities within the body politic of the American Nation.

As a guide for the determination of economic development programs, the Presidential Task Force's proposals under the headings of Employment, Incentives to Attract Industry, the Indian Development Corporation, Planning, and Leadership and Training should be studied. Programs should be developed with the Indians that point the way to vastly increased vocational training; tax credits and other incentives to attract industry; carefully planned and innovative industrial centers on or near reservations that will not create slums and new problems; adequate loan funds to finance tribal enterprise; and the creation of a variety of forms of credit for tribes and individual Indians. An Indian Development Corporation, with functions as proposed by the Presidential Task Force, should be considered as the instrument by which to achieve a maximum number of these goals.

In the meantime, and until long-range programs such as the above begin to have a marked impact on the reservations, a determined effort must be made to provide training and jobs as quickly as possible for 50,000 unemployed Indians on reservations.

This effort should include adequately financed reservation public works programs in which Indians receive jobs and training on recreational development, homebuilding, road, conservation, and other community improvement projects. Programs, developed at the reservation level, should be designed to put unemployed tribal members to work. The funding should come from increased reservation budgets, or from programs of other Government agencies, or from a combination of both.

The planning and application of all economic development programs, long and short range, should reflect the Indians' own needs, desires and cultural traits. By bringing the Indians into the planning and decisionmaking process, programs need not fail, as they have in the past, because they ignored such factors as the types of industry or activity most attractive to the Indians (i.e., outdoor-oriented enterprise) or tribal cultural traits (i.e., group, rather than competitive, orientation that makes it difficult for some Indians to assume positions in which they must direct, persuade, or give orders to others).

Finally, in such fields as health, housing and welfare, the types of programs needed have been blueprinted in the most recent Reports (the Presidential Task Force, the Interagency Task Force, the President's message, etc.) noted in section III of this study. What is required in these fields, above all else, is commitment with adequate funds to bring an end to the long-endured problems.

In conclusion, a long, hard look should be taken at the conflicts that arise between the BIA and the tribes and Indian individuals as a result of the trust functions of the Government. Almost every day, disputes occur between Indians and BIA personnel over leasing, grazing, permits, rights-of-way, wills, use of income, tribal budgets, judgment funds, details of tribal government, approval of attorney contracts, tribal resolutions, ordinances and constitutional amendments. All of these confrontations stem from the large field of responsibilities and obligations given by law to the trustee.

With minor exceptions, the Indians desire the Federal Government to continue to provide its trust protection for their lands, and the Government must continue to give that protection. But it should be possible, by amending the Indian Reorganization Act and other pertinent statutes, to reduce the number of ancillary obligations and responsibilities of the trustee. In their drive for self-determination and self-government, tribes will press increasingly for the right to program their judgment funds, have authority over their budgets, and assume full responsibility for the management of their income, the making of contracts with attorneys, and the framing of tribal codes, resolutions, and constitutional actions. Without abandoning the trusteeship protection of lands, the Government should be in a position to be able to transfer those other responsibilities, piecemeal or in full, to tribes deemed ready to assume them. For some tribes, that day may be already have arrived, and the continued denial to them of rights they are able to exercise for themselves may be viewed as the most stultifying of all the obstacles that inhibit them on their road to development.

SUGGESTED STRUCTURE FOR THE BUREAU OF INDIAN AFFAIRS

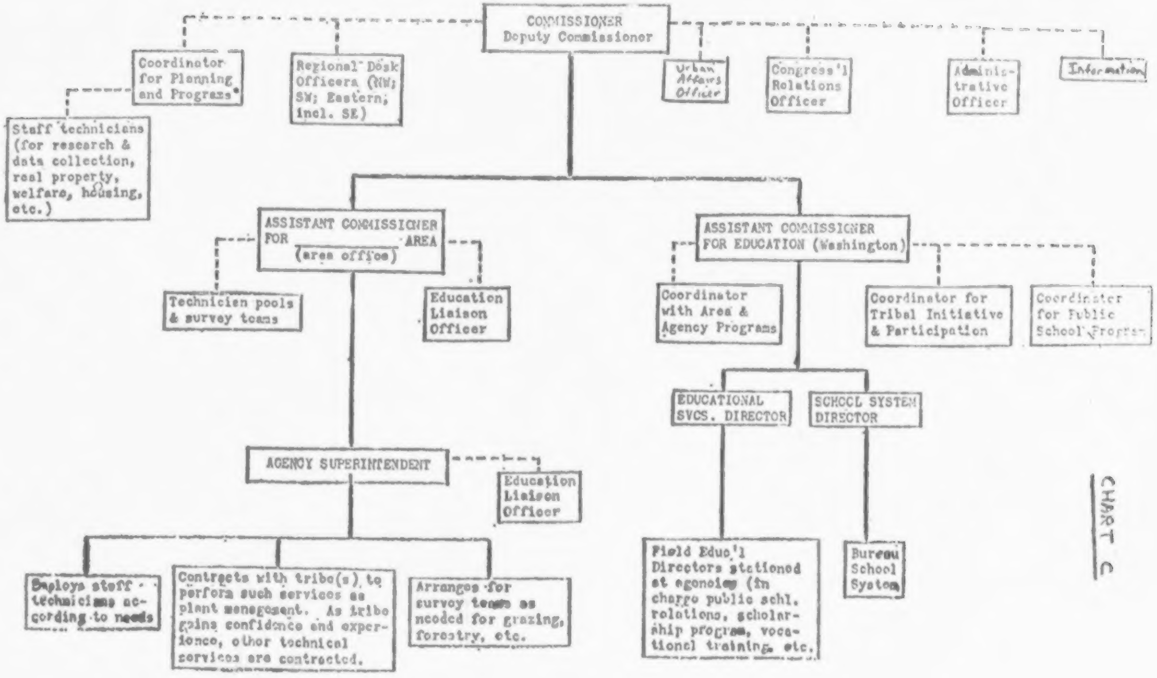

COMMISSIONER
Deputy Commissioner
Coordinator for Planning and Programs
Staff technicians (for research & data collection, real property, welfare, housing, etc.)
Regional Desk Officers (NW; SW; Eastern, incl. SE)
Urban Affairs Officer
Congress'l Relations Officer
Administrative Officer
Information
ASSISTANT COMMISSIONER FOR ______ AREA (area office)
Technician pools & survey teams
Education Liaison Officer
AGENCY SUPERINTENDENT
Education Liaison Officer
Employs staff technicians according to needs
Contracts with tribe(s) to perform such services as plant management. As tribe gains confidence and experience, other technical services are contracted.
Arranges for survey teams as needed for grazing, forestry, etc.
ASSISTANT COMMISSIONER FOR EDUCATION (Washington)
Coordinator with Area & Agency Programs
Coordinator for Tribal Initiative & Participation
Coordinator for Public School Program
EDUCATIONAL SVCS. DIRECTOR
SCHOOL SYSTEM DIRECTOR
Field Educ'l Directors stationed at agencies (in charge public schl. relations, scholarship program, vocational training, etc.
Bureau School System

CHART C

I. Who Should Control Indian Education?

A History
Two Case Studies
Recommendations

A REPORT FUNDED BY THE CARNEGIE CORP. AND PREPARED BY FRANCIS MCKINLEY, STEPHEN BAYNE, AND GLEN NIMNICHT (EXCERPT), JUNE 12, 1969

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The laboratory was established through a joint powers agreement in February 1966. Signatories as of December 31, 1968, include:

The regents of the University of California;
The California State Board of Education;
The trustees of the California State colleges;
The county superintendent of schools of the county of Monterey;
The board of education of the San Francisco Unified School District;
The regents of the University of Nevada;
The Nevada State Board of Education.

RECOMMENDATIONS

In light of the results of our bibliographic and field investigations of Indian education namely, (*a*) that present classrooms are poorly adapted to the Indian child, and (*b*) that it is absolutely necessary that Indian communities be allowed to assume major responsibility for the education of their children, we make the following recommendations to Government agencies, private foundations, and research interests.

Government

1. *We recommend the creation of a Federal Commission to assume control of Indian education, with an explicit mandate to transfer this control to Indian communities within 5 years, after which the Commission would cease to exist.*

The Commission would assume responsibility for the following: (*a*) expediting the transfer of control over education to Indian communities by providing legal services; (*b*) training Indian educators to administer and staff the schools; (*c*) providing consultant assistance to Indian school boards toward establishing and operating a local school system; (*d*) providing funds for revising curriculums to reflect the history, culture, and values of the Indian people the school serves; and (*e*) serving as a conduit for Federal support funds, including Johnson-O'Malley funds.

The documentation which this report gives to a continuing history of paternalistic relationships between the Bureau of Indian Affairs and Indian communities provides a strong rationale for immediate implementation of a program to transfer quickly the control of education from the Bureau of Indian Affairs to Indian communities.

Three models now exist for such a transfer. The first model is the Rough Rock Demonstration School which is operated by Dine, Inc., a Navajo nonprofit organization. The second model is the Blackwater School on the Gila River Pima Indian Reservation in Arizona where an all-Indian school board of education has assumed jurisdiction for a former BIA day school. A more recent model is the Tama Community School which will be operated by the Tama Indian Community beginning with the 1969–70 school year. (The BIA had planned to close this school and to transfer the students to a nearby public school. The Mesquakie Indians of Tama Indian Community protested, and succeeded in getting a court order sustaining the school.)

We would add that the definition of "community" in the transfer process need not be a monolithic one. The Commission could conceivably transfer control to local groups such as Headstart parents advisory committees, tribal councils, or intertribal organizations such as the Arizona Indian Development Association or the California Indian Education Association.

We consider the following factors to be favorable to adoption of the specific method of control transfer which we have recommended above:

> The time limit is long enough to insure that the transfer of control will be orderly, and short enough to reassure the Indian people that the change will occur quickly.
>
> The limited life and purpose of the Commission will avoid the problem of replacing one vested interest bureaucracy with another.
>
> With adequate support for training administrators, teachers, and school board members, for revising curriculum, and for introducing educational innovations, the Federal Government can transfer the schools to local people in a manner that will greatly enhance the schools' chances for success.
>
> This proposal will not prevent mistakes from being made in the provision of education for Indian children. However, the mistakes will be made by the Indian people themselves, and not by a Federal bureaucracy. Considering that our analysis has shown education for Indians to be largely a failure, we do not feel that the mistakes made by the Indian communities would make the situation any worse than it is now.

2. *We recommend that, in the interim until the Commission is initiated, there be an alteration in the criteria used within the Bureau of Indian Affairs for making decisions about promotions and financial rewards.*

Rather than rewarding field personnel for accurate reporting and tight administration as is now the general practice, rewards should be granted by the degree to which the recipient has (*a*) successfully involved members of the Indian community in decisionmaking at the highest level; (*b*) transferred some of his responsibilities to Indians; (*c*) increased the number of Indians holding responsible positions; and (*d*) encouraged experimentation and innovation. If these criteria were applied to all aspects of the BIA's operations, the result should be an increase in the opportunity for local Indian people to govern their own affairs, at least to the extent that similar opportunities exist for non-Indian communities.

3. *In the interim until the Commission is formed, we recommend changes in the procedures of recruiting and selecting educational personnel within the Bureau of Indian Affairs.*

The standards of the education profession rather than those of the Civil Service should determine who shall teach Indian children. Currently, principals must accept a staff chosen by the Bureau Area Office from Civil Service registries, and thus find themselves often burdened by teachers poorly qualified and unadaptable to the special conditions inherent in teaching Indian children.

4. *In the interim, we recommend that a definite statement of goals and purposes be made for each of the boarding schools operated by the Bureau of Indian Affairs.*

The boarding schools have never been, and are not now, simply "high schools," although that is what they purport to be. We recommend that the boarding schools be converted to special purpose institutions such as terminal vocational centers, academic high schools, remedial and special education centers, junior colleges, special subject schools (such as the Santa Fe Institute of American Indian Art) or regional schools, rather than keep their confused and archaic status as mixed academic, remedial, and disciplinary institutions.

We wish to be perfectly clear and explicit that the above recommendations are not intended in any way to support "termination." We feel that Indian communities have the right to their present legal privileges and immunities for as long as they wish to perpetuate them, and that it is the responsibility of the Congress as well as of the Indian communities to see that these rights are protected.

Private foundations

1. *We recommend that the foundations provide direct support to responsible groups of local Indians involved in educational concerns.*

Presently, foundations often support large national organizations in which grant moneys are frequently lost in bureaucratic operations and overhead expenses. The groups of parents currently organized on many reservations, such as Headstart advisory groups and the advisory school boards for BIA schools, are in many cases anxious to extend their roles in the operation of education programs, and require the latitude given by direct financing to formulate plans and initiate pilot projects. Direct financing also promotes the kind of responsible operations and attitudes which must be developed if Indian communities are ever to become independent from external bureaucratic control. We recommend that indirect financing be limited to research of the type which we will describe subsequently, and to programs of consultant assistance to Indian communities.

2. *We recommend the support of those research and development projects which will involve the Indian communities at large in educational thought and action.*

As examples, we would cite the following:

(*a*) Community self-studies. These accomplish the dual purpose of training local Indian people in the techniques of interviewing, questionnaire preparation and administration, bibliographic and documentary research, and data analysis, while also promoting sophisticated understanding by local people of the operations of their own community life. Thus both skills and knowledge indispensable to the administration of community affairs are developed concomitant with the accumulation of valuable data for the social sciences. This type of project also provides latitude for Indian people to develop alternate and indigenous models for research inquiry which may prove to be more effective than current professional techniques.

(*b*) Educational materials libraries, such as the parent-teacher operated "toy libraries" utilized by the Far West Laboratory. The child's use of educational toys in the home is extended in this type of project, to include training of parents to observe the growth fostered by use of the toys, and to participate in learning experiences with their children. Parents thus become involved in basic and conscious processes of education, and interact to a greater extent with each other and with teachers in educational concerns.

* * * * * * *

4. *We recommend that the foundations provide funds for the training and placement of young Indian leaders in research and development projects.*

We particularly suggest internship programs in which young men and women could gain field experience in educational affairs, be of service to their communities, and at the same time obtain the academic credentials necessary for education positions at the highest level.

5. *We recommend that the foundations sponsor compensatory evening or summer programs to bolster the written and computational skills which reservation Indians have little chance to develop or practice.*

These skills are invaluable not only for responsible self-government on the reservation, but for life off the reservation, where Indians must deal with the unfamiliar operations of insurance, hospital bills, and taxes.

6. *We recommend that the foundations fund a central clearinghouse for the collection and dissemination of information on research and action projects in Indian communities across the country.*

At present, not only are people involved in action research generally uninformed of similar activities in other parts of the country, but Indians within the community sites of research projects are often completely uninformed as to the purposes and results of research which directly concerns them.

Research interests

1. *We recommend that future research in Indian communities include an action element oriented to community needs, and that members of the community be as closely involved in the planning and operation of such projects as is possible.*

We have heard Indians express tremendous resentment that the vast amount of research done in their communities has neither been communicated to them, nor has it been organized to be of benefit to them.

We must reiterate that action programs be initiated and planned *by the community* from the beginning. Researchers must not allow themselves to drift into the easy paternalistic roles often desired of them by the community itself. Indian people have too long been encouraged to ask "experts" for advice rather than formulate their own plans, and have therefore never had a real stake in the programs arranged by others for their benefit—programs which have often floundered as soon as the "experts" leave the scene. Directional advice, no matter how informed and well-meaning must be avoided at the commencement of programs until the community has formulated its own goals and set its own course of action.

2. *We recommend that where possible Indian communities formulate their own research areas and designs for presentation to funding and research groups.*

The Indian communities are thus elevated from the status of experimental "guinea pig" to that of research partner.

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J. Indian Views on the Reorganization of the Bureau of Indian Affairs

POSITION PAPER ADOPTED BY THE EXECUTIVE COUNCIL OF THE NATIONAL CONGRESS OF AMERICAN INDIANS ON MAY 16, 1969, ALBUQUERQUE, N.M.

The National Congress of American Indians would like to project several views and ideas that we have concerning the Federal Administration of Indian Affairs during the present and subsequent administrations.

The creation of the National Council on Indian Opportunity by President Johnson was a milestone in the involvement of Indian people with the administration of this country, and as such it can be a vital mechanism for Indian involvement in their own progress. There is no other like body which gives the Indian people such vital participation in the discussion and solution of their problems. The National Council on Indian Opportunity must be continued and funds appropriated for its continued operation.

There is no question about the desirability of appointing an Indian of recognized ability to the Indian Claims Commission.

The Bureau of Indian Affairs for a long period of time has handled matters involving Indian people. After a fair consideration of all the issues involved, we believe that the Bureau of Indian Affairs has, in good conscience, attempted to carry out its programs and functions, but we believe that the time has now arrived to take a long and analytical look at this Bureau.

The abolition or dispersal of the Bureau of Indian Affairs and all of its services among other Government agencies certainly is not the answer. We believe that the Bureau of Indian Affairs can effectively perform its present duties if the organization is revised. It has the experience and know-how that is required in areas that it directly involves the Indian people in management.

The Bureau of Indian Affairs should, by legislation, be made an independent commission or agency. At the present time the Bureau of Indian Affairs must compete for funds with other agencies and bureaus within the Department of Interior who are also the responsibility of the Secretary of the Interior. The Department of the Interior is basically a land-oriented organization, rather than a human-oriented organization. The Department's budget managers are also land oriented. They do not have the required empathy regarding basic Indian problems which are human in nature, such as the community problems of education, housing, and so forth. The Secretary of the Interior often finds himself hamstrung by the Department and other interests which are more interested in other areas. This conflict of interest at the Secretarial level cannot contribute to the fair and impartial administration of Indian Affairs.

The very bureaucratic structure of the Bureau of Indian Affairs insulates the Secretary of the Interior from the Indian people. The Secretary's chief representative of the Indian people, the Commissioner of Indian Affairs, is also further insulated from the people by the area offices. With these insulations, it is no small wonder that many critics of the Bureau of Indian Affairs claim that the job is not being done, and that top heavy administration results. Limited funds are now being wasted on useless office support, which also breeds excessive redtape and reporting requirements. Direct access to the top administrators is needed. The establishment of an independent Indian Commission will remove most of the bureaucracy that makes it so cumbersome for Indian people to communicate with those who are responsible for Indian Affairs. We believe that this proposed Indian Commission will be more responsive to the Indian people and speed the day when full-scale development can be implemented in Indian communities.

We would recommend the establishment of a committee or commission to study the operation of the Bureau of Indian Affairs. Included in this body should be a broad representation of responsible federally recognized Indian leadership. One of the primary tasks of this body should be a complete study and evaluation of the present Bureau of Indian Affairs budget process. The present process has built-in pitfalls which not only encourage, but promote and nourish the building of empires by bureaucratic branch chiefs through their control of funds, promotions, et cetera, at the central, area, and agency levels.

We believe that funds appropriated by the Congress for the benefit of Indians and Indian tribes should be appropriated with broad discretionary powers for their use given to the Commissioner of Indian Affairs and especially to the agency superintendent. The present line-item-functional appropriations result in waste for some functions through an overabundance of funds while other necessary functions are curtailed because of fund limitations. The revision of the budget process should also include the approval or the veto power by tribal governing bodies during the local agency budget submittal process.

The Indian agencies at reservation level should be reorganized, taking into account local needs and the total reservation development programs. The present Bureau structure, which calls for an agency branch to complement every Washington branch chief whether it is essentially needed or not, should be eliminated. The local agencies should be revamped to include an effective combination of facilities and services urgently and ultimately needed to achieve the human resource, natural resource, and economic developments in the Indian community.

We have some reservations about Indian tribes contracting to perform services for the Bureau of Indian Affairs. It many cases, Indian tribes do not have the necessary capital to contract to perform these services. If Indian tribes are to be encouraged to contract with the Bureau of Indian Affairs, the necessary working capital and equipment must be made available on an outright grant basis to permit the tribe to function economically. It should be specifically understood that if Indian tribes are to contract with the Bureau of Indian Affairs, that a fair return by the tribes is to be expected and that the tribes should not be expected to pay substandard wages to perform these services. Also, the tribes should be offered not only the dirtiest, smallest, and most difficult jobs which the agency must accomplish, but tribes should be encouraged to accept major tasks that may require them to develop their own staffs of skilled experts. In many instances, tribes are offered just those jobs that the Bureau of Indian Affairs has never been able to successfully accomplish, or those which are insignificant, or those which the Bureau of Indian Affairs does not want to be bothered with.

If Indian tribes with very little capital contract with the Bureau of Indian Affairs, this contracting could bankrupt them unless payment procedures by the Bureau are improved. Further, the failure of Congress to give continuity of appropriations for Indian contract programs and developments could leave Indian contractors with costly, but unusable equipment. Excessive contract supervision and redtape requirements should also be kept in check if Indian tribes are to be expected to contract successfully.

We have many years to go before the Indian people and their communities reach optimum development; therefore, any thoughts of abolishing or parceling out the services of the Bureau of Indian Affairs to other Federal agencies is out of the question at this time. If another Federal agency attempted to take over one of the present functions of the Bureau of Indian Affairs, that agency would have to learn the difficult task and would be faced with the same problems which the Bureau of Indian Affairs faces. We suggest that the change of the present area-agency system is the most expedient route to take.

If the Bureau of Indian Affairs is abolished or its services fragmented it will again jeopardize, and in many cases it will terminate the present services of the Federal Government. It will be termination in disguise. Indian people have never been successful in competing for services through other Government agencies, and the services received from these agencies have been very small or practically nil except for the excellent services now received from the Economic Development Administration and the Office of Economic Opportunity.

Politically and socially it is almost impossible for the Indian to compete for services among other Federal agencies. With the huge backlog of services and developments needing to be accomplished, at best, the parceling out of Bureau of Indian Affairs services to other Federal agencies would only be an injustice to these agencies because of their already insurmountable workload. A revamped and revitalized Bureau of Indian Affairs with sufficient funds can and will do a better job.

K. Our Brother's Keeper: The Indian in White America, by Edgar S. Cahn, editor, Citizens' Advocate Center, 1969. (excerpt)

1

THE BIA—A TERMINAL CASE OF BUREAUCRACY

Judged by four basic standards of governmental performance—efficiency, technical competence, innovation or effective advocacy—the Bureau of Indian Affairs is a failure. It appears remiss in meeting even the minimal standards of performance for a public body entrusted with a public function.

This is not an attack on the motives, intentions or character of BIA employees, however. The Bureau has a number of sincere, dedicated civil servants. It also has accumulated over the years unique stores of experience and expertise in dealing with Indian people and their problems.

In a 1969 report to the White House, Alvin M. Josephy, Jr. quoted Leon Osview's memo to the Subcommittee on Indian Education: "The BIA structure is designed more than most for stability. It is doubtful that very much could be done with or to the people in the organization, given the present structure, to encourage innovative practice. . . . One thing does seem certain: the present structure not only serves to reward unaggressive behavior and docility but punishes, usually by transfer, those who persist in behaving like leaders. The reward system of BIA discourages leadership, on purpose. It is, therefore, not possible to conceive of change and improvement within the present structure." [1]

Besides the Bureau's wealth of official powers, it has been given a sweeping mandate to reform itself. When BIA Commissioner Robert Bennett took office in May 1966, President Johnson told him: "Do anything you have to do" to straighten up the BIA. "If there are cobwebs in the Bureau, then clean them out. Let's set up some Civil Service Boards to hear the cases. Let's get some can-do people at work." Bennett went out of office in June 1969. Bureaucratic inertia had triumphed; the BIA was more lethargic than ever. Former Interior Secretary Udall criticized this lethargy, noting that the BIA seems ". . . to have a time clock of its own . . . it is hard to get the feeling that anything is urgent."

A Kennedy Administration Task Force was alarmed by the degree of dissatisfaction among Indians over the BIA's network of reviews, appeals and form-swapping. Five years later, at a 1966 Indian Leaders Conference with Commissioner Bennett at Spokane, Washington, spokesmen for the Umatilla Tribe said their efforts at self-help were "continually frustrated by administrative delays, indecisiveness, foot-dragging and over-concern with technicalities in the Bureau of Indian Affairs. . . ." The red tape permeates every layer of the Bureau's activity, especially its decentralized area offices.

When former Commissioner Bennett tried to circumvent his own bureaucracy by contracting with outside parties for the provision of services, he was thwarted by "delays," "indecisiveness" and a reluctance by field officials to approve contracts without seeking endless prior clearances from above.

Again Josephy quoted from Osview: "In theory, a major advantage of decentralization is that it permits a freer exercise of political democracy. . . . It would be satisfying to be able to note that such an advantage inheres in the BIA administrative structure. But the route upward through the echelons seems to be no less difficult than downward for personnel, at least on the things that matter most." Josephy said the BIA's organization runs roughshod over grassroots efforts and specialists' advice, to the advantage of the administrative structure.[2] The result is a system of endless buckpassing, with many minor local questions winding up in Washington.

Reluctance to delegate authority to the local level also is crippling. The local superintendent, for example, can approve sales up to so many board-feet of Indian timber, but beyond he must have the consent of his area director. The area director also has a limit, beyond which he must turn to the BIA Commissioner. Even the Commissioner is restricted; final authority for large timber sales rests with the Secretary of the Interior. In one year some 83 per cent of all sales by volume required the Secretary's approval—a process which delays the sales and inhibits negotiations in the up-and-down lumber market.

With notable exceptions, the quality of BIA personnel remains low, its level of incompetency alarmingly high. Interviews with officials in other Government agencies, consultants and specialists and academics bear out this charge of pervasive mediocrity made long ago by the Indians.

Studies by the General Accounting Office, internal BIA Reports and a myriad of task force findings all point to an incredibly low level of technical competence at the Bureau. Despite the criticism, the Bureau has been reluctant to reorganize itself, and slow to hire outside consultants and expert help. The Department of the Interior, and especially the BIA, spend considerably smaller percentages of their budgets on consultants and specialists than most other agencies.

As a result of this closed-door policy toward consultants and a reluctance to restructure, the research and statistical capability of the Bureau is poor. A recent independent study of BIA manpower programs said the agency "has no really hard data on population dynamics, income, employment, education, and so forth. It has few benchmarks against which to measure progress, and more importantly, grossly inadequate data on which to base economic development and manpower programs." [3] Equally shocking, the report said, is the "total absence of any research and demonstration funds in the BIA budget. A sensitivity to social science research and the linkages between Research and Demonstration and program innovation has not existed in the past in the BIA."

Other studies have made the same observation. Record keeping and statistics remain low priority at the BIA. Instances have been reported where records were deliberately destroyed, during GAO investigations and other research projects, to hide evidence of poor BIA performance.

The BIA substitutes excuses for performance. Recruiting is difficult, the Bureau says, because the work is mostly in remote areas; because pay is low and non-competitive; because there is little prestige and a high frustration potential.

Admittedly there is little prestige in working for the Bureau. No job market is clamoring for ex-BIA employees. The Peace Corps and VISTA have encountered little difficulty, however, in recruiting talented men and women of all ages and backgrounds to work for subsistence pay and travel to the most isolated and remote spots in the United States and elsewhere. The problem at the BIA goes to the nature of the BIA worker's role, which relates to the high frustration potential.

The Bureau's admission of recruiting difficulties is in itself a characterization of much that is wrong. The prime untapped sources are the Indians desiring to live on the reservations and contribute to the well-being of their people. But the Bureau has not trained them to assume high-level managerial positions. In 1968, 89 per cent of the Indians employed by the BIA held positions that paid less than $8,000.

The Bureau has been reluctant to contract with tribal councils to perform certain functions. When it has, tribal employees have been paid lower salaries and treated as inferior to Bureau employees. Finally, employment in the Bureau, for an Indian, is often viewed as a sellout—a choice between siding with his people or joining the enemy. And under the circumstances, the recruitment problem is really a reflection of the Bureau's relationship to the Indian.

A "New Day" for Indians is unveiled every two-to-four years—during each Presidential campaign, upon the appointment of a new BIA Commissioner, and upon creation of each new study task force.

The "New Day" invariably is old policy swaddled in new rhetoric, pumping more dollars through the same cumbersome and incompetent bureaucracy. There is always talk about "self-determination." Josephy in his report to President Nixon quotes an anonymous Indian leader as saying, "During the last eight years, Indian policies and programs have been studied to death. What we need is for someone to begin paying attention to some of the things that the Indians recommended in those studies."

One major source of resistance to innovation is the process which imposes review upon review on every idea proposed from the top. The process subjects each creative spark to attack and distortion by persons who see their empires threatened. Even if innovation were encouraged, however, a jungle of regulations, procedures and guidelines which have not been streamlined in 30 years poses a formidable obstacle.

> "How do we develop new techniques, the opportunity to enable tribes . . . to make their estates more valuable? Here again we have been shackled with the rigidity of our rules and present policy. Let me give an example. . . .
>
> "When one of the big dams on the Columbia River (in Washington State) was built and the [Umatilla] tribe received a large settlement, the ones who remained on the reservation and who wanted to further develop their reservation resources came up to me with what was a very creative idea; this was six-seven years ago. They wanted to take the money and, instead of dividing it up per capita, to buy out the interests in the Indian reservation of those Indians who no longer lived on the reservation and who would prefer in that period to take cash. This, of course, would make the reservation more viable. The Bureau of Indian Affairs said there was no way to *do* it. Indeed, there was not at the time. But how can you solve economic and human problems unless you can solve problems like this? (Statement by Interior Secretary Udall, April 14, 1966, at Santa Fe, New Mexico)

Ironically, Udall's example proves he *did* have the power to respond. He was restricted, if at all, only by a regulation he himself could have waived. But he was trapped because he took the word of his own bureaucracy that there was nothing he could do.

Massive resistance to innovation comes from within the BIA. It is there paternalism and empire-building remain the rule, despite decades of lip-service to self-determination for the Indians. It will be difficult to change these deep-seated attitudes, the Pyramid Lake Tribal Council wrote Udall in 1967. "Many of the 22,000 government employees directly employed in Indian matters . . . are set in their ways. It may prove impossible to convert government overseers with 'father knows best' attitudes into public servants willing and competent to work for those members of the public who are Indians." [4]

Commissioner Bennett spent a major portion of his nearly three years in office trying to soften attitudes within the Bureau. He created a BIA newsletter, "The Indian Record," for distribution to Indians and lower echelons of the Bureau in the hope of strengthening understanding.

Such evangelical endeavors are certain to fail, however, as long as BIA powers are fragmented in the present decentralized system. Upward accountability stops at each step of the way. It is like a cliff pocked with tiny platforms, each isolated from those above and below. From these platforms, BIA personnel can fight among themselves and shout at those above and below, secure in the knowledge that they are out of reach. The Indian, at the foot of the cliff, is limited in his shouting range. He is rarely heard beyond the lowest platform.

The Bureau has even thwarted the traditional method of balancing "staff against line" where professionals directly accountable to the leadership serve a watchdog role over line personnel to insure accountability upward. The passage of time has merely produced parallel bureaucracies, neither of which is accountable, both of which spend most of their time fighting each other.

In budgeting BIA monies, the structure becomes even more uncoordinated. A 1969 study noted:

> "In the budget process, each agency, in theory, prepares its own budget, which is then evaluated by the area office and consolidated into an area budget, then submitted to the Washintgon office for similar evaluation and consolidation. In practice, guidelines based upon previous budgets are determined in Washington, and allocations are actually dictated and controlled by the Divisions as entities rather than by the agencies at the operational level. For example, if a superintendent decides that the budget of one branch on his reservation should be cut and another increased in order to serve a tribe more effectively, the offended branch sends word up through the line to its Division chief in Washington, who then informs the superintendent that if his branch does not need the money in his agency, it will be transferred within the same branch to another agency. Under this system, considerable time and energy that should be spent on service at the operational level are expended in conflicts between the Division hierarchies on the one hand, and the superintendents and area directors on the other. At the same time, the system often results in the presence on reservations of branch specialists who are not needed and, conversely, of not enough personnel or funding for branches that are badly needed." [5]

Officials who want to develop an idea or speed up a process must learn to lose more often than they win, and especially to expect defeat on innovative suggestions. The result is complete frustration of leadership and creative work at every level.

In the Bureau of Indian Affairs, the Indian has no advocate. The BIA seems incapable of fighting either for adequate resources or for self-determination for the Indians. Each new commissioner takes over administration of the BIA, undaunted and unaware of the Bureau's capacity to undercut him completely. Taking office in 1961, President Kennedy's appointee Philleo Nash, was warned that "many of our leading Commissioners . . . have become the captives of the professionals with the Bureau." "I am not," Nash replied confidently, "proposing to be anybody's captive."

Senator Clinton Anderson of New Mexico responded:

> "I will tell you privately some time of an Indian Commissioner who assured me that he would not become a captive and after about a year he said, 'I'm very sorry, there is nothing I can do. They send me to Alaska one week. They send me to Guam the next week. The people here get me out—they will not let me sit here in the office.' "

Organizational changes designed to sharpen the BIA's responsiveness to Indians instead become new instruments of control in the hands of veteran bureaucrats. BIA officials who try to deal responsibly with Indian demands and needs, who make a genuine effort to advocate the Indians' point of view, find themselves without power, boxed in by regulations and fellow workers. In most cases the official who knows most about a tribal situation and may be most responsive to tribal demands, the superintendent, lacks the authority to deal with it.

In the state of Washington, for example, the Quinault Indians complained that while the superintendent of the Western Washington agency was sympathetic to their pleas for protection of their land base and for greater self-determination, the Portland Area Office of the BIA constantly vetoed the superintendent's determination.[6]

The bulk of BIA employees are dependent upon Area Offices for promotions, transfers, information, access to Washington and help with technical projects on their reservations. Thus, Bureau employees who dare to side with the Indians against the wishes of the Area Office must be prepared to face stern reprisal from which there is no effective protection.

A memorandum from an acting reservation superintendent to his area director mentioned the three worlds of the reservation—the BIA, the Indian and the local non-Indian: "Many of the non-Indian employees lack the capacity or desire to understand why the Indians' behavior and points of view differ from their own. They do not wish to communicate with Indians on a social plane. They work with

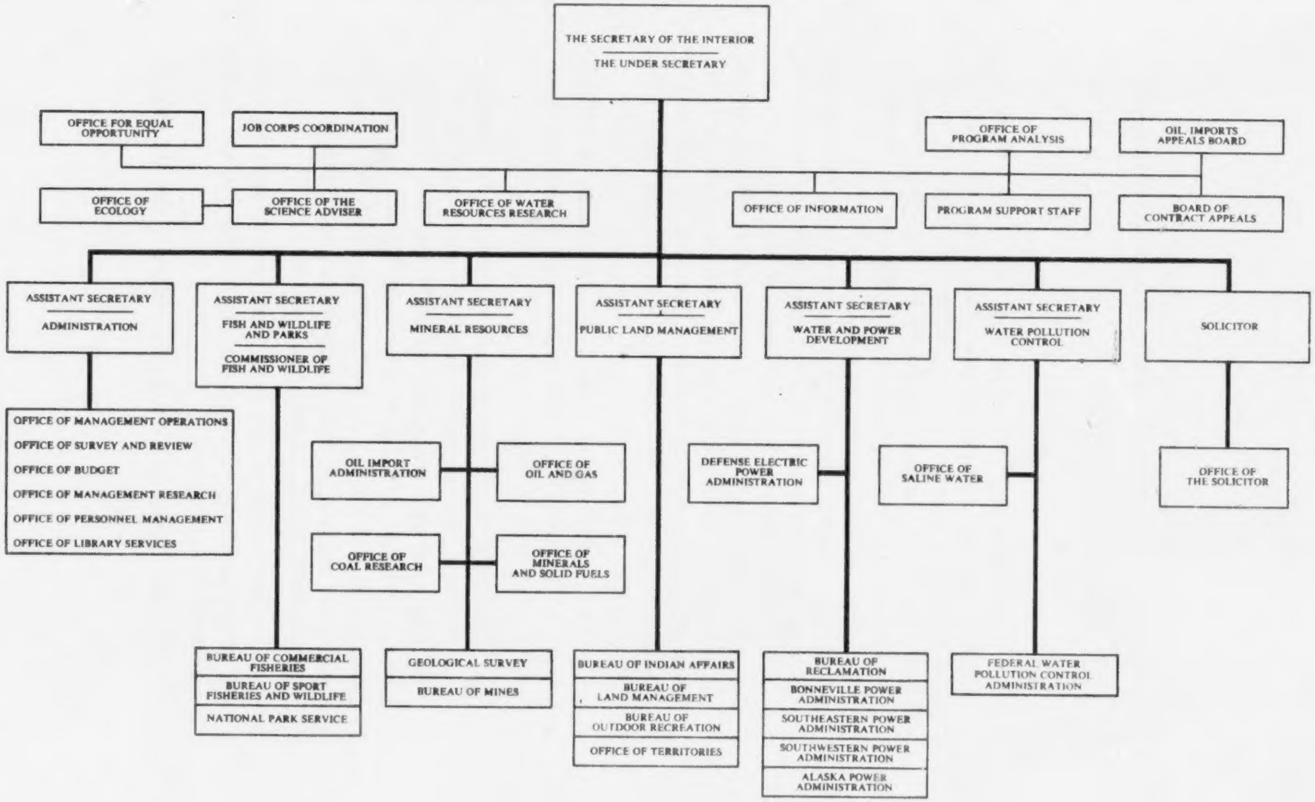
Indians during the day, but on their own time they associate with the BIA fraternity or, to a far lesser degree, with members of the local white community."[7]

BIA field employees often are transferred when they begin bucking standard operating procedures. A group of tribal leaders meeting in Albuquerque complained to Commissioner Bennett about "the harrassment of some Bureau employees who become *too* involved with the Indians. Many of these people are highly qualified and dedicated to helping the Indian people, but because these individuals buck the old-fashioned Bureau policies, the Bureau rewards them by transferring them out of the Area or into another department. . . . Local Area officials [should not] abuse these individuals. . . ."[8] Bennett heard similar complaints from Indian representatives at a conference in Las Vegas, Nevada.

Ultimately, the only persons with an enduring interest in making the Bureau more responsive are the Indians. Officials come and go. Policy changes, but the sluggishness remains. The Bureau's constant dampening of all efforts at Indian involvement, Indian initiative, Indian participation are the true tell-tale symptoms of a bureaucracy in its terminal stages. Josephy's White House Report said it bluntly:

> "On the reservation level, where Indians are trying to participate constructively to help frame, design and execute programs to meet their problems, they are hamstrung and frustrated daily by an endless round of delays and negativism occasioned by the internal workings of the higher echelons of the Bureau. The effect is that the Indians cannot participate in making decisions for themselves, for in meaningful things, the decisions cannot be made at their level. Government protestations in support of the principle of self-determination notwithstanding, the important decisions must be, and are, made—under the present arrangement—in the echelons above the Indians."

DEPARTMENT OF THE INTERIOR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BUREAU OF RECLAMATION
BONNEVILLE POWER ADMINISTRATION
SOUTHEASTERN POWER ADMINISTRATION
SOUTHWESTERN POWER ADMINISTRATION
ALASKA POWER ADMINISTRATION
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION

II

THE COMPROMISED ADVOCATE: THE BIA WITHIN THE DEPARTMENT OF THE INTERIOR

The U.S. Department of the Interior is a chamber of the mighty. Oil and gas billionaires, lumber barons, ranchers and corporate farmers, sportsmen and recreation interests, hydroelectric and mining promoters number among its customary clientele and constituency. All have intimate relationships with the Department, all work amicably with Interior officials to cultivate a relationship of mutual accommodation. The Indian, however, stands out as the poor relation—ill at ease, an incongruous and unwanted guest evoking condescension and embarrassment. The Bureau of Indian Affairs is perhaps the lowliest of agencies housed within Interior, even though it receives a little more than 18 per cent of the Department's budget and employs almost 25 per cent of the Department's staff.

The BIA's location within the Department of the Interior is fundamentally incompatible with the effective discharge of its duty to Indians.

Interior's jurisdictions include the Bureau of Commercial Fisheries, the Bureau of Sports Fisheries and Wildlife, the National Park Service, Bureau of Mines, U.S. Geological Survey, Bureau of Land Management, Bureau of Outdoor Recreation and Bureau of Reclamation—each of them enjoying the support of well-organized and well-formed local interest, with strong congressional liaison.

—The Bureau of Mines opposed Indian interests when it sought to obtain helium from the Navajo Indians in the Southwest at a low price.

—The Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife are in conflict with the Indians over Indian fishing rights, including the salmon controversy in the Northwest.

—The Bureau of Reclamation has consistently opposed efforts by the Paiute Indians in Nevada to protect Pyramid Lake.

—The Bureau of Land Management is in disagreement with the Colorado River Tribe in Arizona and the Fort Mojave Tribe in California as the tribes seek to protect the boundaries of their reservations.

—The National Parks Service has eyes for the Bad Lands, which belong to the Oglala Sioux Indians on Pine Ridge Reservation, South Dakota.

And beyond Interior, the BIA has constant difficulties with such other land-oriented agencies as the National Forest Service (part of the Agriculture Department) and the U.S. Corps of Engineers.

Inter-agency and even intra-agency disagreements in Washington are not uncommon. Critical to their outcome is the forum in which the differences are judged. Within the Department of the Interior, the Indian generally loses. His interests, as represented by the Bureau, get short shrift in that forum.

Indians invariably are forced to give way to more powerful interests. Both in specific controversies involving a dam or a park, and in departmental controversies involving budget, personnel and priorities, the BIA structurally lacks the research capacity, the technical expertise and the legal counsel needed to present fully the Indian case. Most of the time it must rest on expert opinion from elsewhere—and often the experts come from the agency with whom the Bureau is in conflict. In a dispute involving oil, the BIA will seek advice from the U.S. Geological Survey, knowing full well that the USGS interests lie with the oil industry.

Many issues hinge upon a consideration of the comparative cost, the feasibility and the efficiency of alternative solutions. It is cheaper, for example, to build a dam on Indian land—if one does not consider the cost of relocation, social disorganization and rising welfare dependency. The BIA lacks the technicians needed to build a convincing case against such a decision.

Although the BIA is the Indian's advocate, the BIA's legal advice comes from lawyers out of Interior Department's Solicitor's Office, which serves the entire Department. Indian interests are not approached from the perspective of Indian rights—but rather as matters for administrative resolution involving the balancing of competing interests. Rights are not weighed in that balancing. They are considered only after the best accommodation has been reached—and it is necessary to prepare legal memoranda demonstrating that the decision involves no curtailment of Indian rights.

In Josephy's report to the White House, the Solicitor's Office was singled out as a major source of resistance and opposition to BIA progress. "We lose a lot of battles there," a BIA official admitted.

In Department disputes, the BIA often finds itself advocating the Indian's cause before an administrator who is biased, unknowledgeable and frequently hostile.

Within the Department and under the Secretary, there are six assistant secretaries, whose jurisdiction are water and power, public land management, wildlife and parks, mineral resources, water pollution control, and administration. The Commissioner of Indian Affairs, head of the BIA, does not have the rank of an assistant secretary, or even of a deputy assistant secretary. The BIA falls under the deputy to the Assistant Secretary for Public Land Management—literally low man on the totem pole. Even when the dispute is with the BIA's co-equal, the Bureau of Land Management, the overall land orientation of the Interior Department weighs against the Indians.

In disputes outside that division, the BIA finds itself outranked. Even if the assistant secretary or under-secretary heading the disputing agency is neutral toward the BIA, the Indians are likely to lose because they are politically impotent and because the BIA's inadequacies are so widely known that it often is assumed to be wrong.

The land and economic orientation of the Department also operates to downgrade Indian cultural, social and religious factors. To take them seriously is considered "softheaded" and romantic, and such views are difficult to defend in a review by the Secretary, the Bureau of the Budget or a congressional committee.

It is inconsistent with the Secretary of the Interior's overall responsibilities for him to be neutral or impartial, let alone sympathetic, to the Indian's cause. He cannot be an impartial arbiter because his primary responsibility as a Cabinet member is as an advocate for conservation and as the administrator charged with protecting natural resources. He must mediate between demands to use and exploit our natural resources and demands to preserve them as part of an irreplaceable heritage. These concerns limit the terms and context in which the Secretary can consider Indian affairs. Matters of culture, of human welfare, of social cost, of self-determination and sovereignty are given less weight in a search for the best use of land and natural resources. The greatest good for the greatest number is the rule, and in terms of land use it is unlikely to produce a decision that favors a few scattered, politically powerless Indians.

Even a Secretary such as Stewart Udall, who held a deep personal commitment to Indians, found that his official overriding duties, commitments and priorities precluded adequate consideration for the Indians. On leaving office in January, 1969, Udall told Interior employees that his only regret was that he had "not done enough for Indians."

Yet, Udall's commitment to and concern for the wellbeing of Indians was the reason why two Presidential Task Forces did not recommend removal of the Bureau from the Department of Interior. With Udall gone, the National Congress of American Indians, meeting at Albuquerque on May 6, 1969, for the first time felt free to call for removing the Bureau of Indian Affairs and giving it independent agency status noting: "The Secretary of the Interior often finds himself hamstrung by the Department and other interests. . . . This conflict of interest at the Secretarial level cannot contribute to the fair and impartial administration of Indian Affairs." [1]

Even when the Secretary of the Interior is personally sympathetic to the Indian cause, he is not free to act upon his personal philosophy and overrule the decisions of those who are less sympathetic. A degree of delegation, of reliance on the judgment of subordinates, is necessary in running an agency so vast as the Department of the Interior. This delegation of authority carries with it a presumption in favor of sustaining the initial decision of the official. To second-guess and overrule a subordinate often does irreparable injury to morale and administration. The 1969 report to the White House pointed out another administrative problem for the Secretary:

> "[T]he ability of the Secretary to play a decisive role in Indian affairs is weakened when he goes through the Assistant Secretary for Public Land Management to the Commissioner of Indian Affairs. The record of the last two administrations [the Kennedy and Johnson Administrations] was one of continued poor communication and 'slippage' between the Secretary and the Bureau. On many occasions, the Secretary gave orders, only to discover months later that nothing had been done or, in some cases, that the exact opposite of what he had requested had taken place."

Any Secretary of the Interior, as a Presidential appointee, is a political figure. He is keenly aware that the Indian has no political clout, that the Bureau of Indian Affairs is unpopular, and that he must face hostile examiners at the Bureau of the Budget in fighting for money to help the Indians. It is here, at the Budget office, that the duties of the Secretary as the chief conservationist conflict most harshly with his duty to the Indian. Two principal examiners at the Bureau of the Budget, Harry McKittrick and Earl Darrah, are known within Washington circles to be unsympathetic to the Indian's welfare and unresponsive to considerations of Indian community development, social welfare and cultural diversity. Nevertheless, they reign supreme on questions of funds for Indian matters, partly by virtue of long tenure and partly because they define the considerations and justifications which must be demonstrated to win their approval. In addition, over the years, McKittrick and Darrah have developed a close working relationship with James Gamble, a staff member at the Senate Committee on Interior and Insular Affairs, and a rabid terminationist. For some time, Gamble has been able to block constructive program proposals or secure budgetary cuts before the program ever reached Congress, with the aid of McKittrick and Darrah. President Johnson, in a message to Congress on March 6, 1968, announced that he was directing the Secretary of the Interior to establish and train Indian parent school boards for federal Indian schools. The President's message was in response to recommendations from a broad cross-section of Indians, non-Indian educators and a special Interagency Task Force of the Government. In spite of this support, it is said that the Bureau of the Budget balked at certain aspects of the proposal and, as a result, inhibited the BIA from effectively implementing the Presidential directive.[2]

Part of the power of examiners in the Bureau of the Budget lies in their anonymity. The Indian may not know who his enemies are, but the BIA certainly does.

L. Reorganizing the Bureau of Indian Affairs

MEMORANDUM TO THE SENATE SUBCOMMITTEE ON INDIAN EDUCATION—GARY ORFIELD, ASSISTANT PROFESSOR OF POLITICS AND PUBLIC AFFAIRS, PRINCETON UNIVERSITY, AUGUST 9, 1969

Few agencies in the entire Federal bureaucracy approach the age and rigid traditionalism of the Indian Bureau. Approaching its 140th birthday, the Bureau has been under attack from the beginning. The first Commissioner of Indian Affairs was named in 1832 by President Andrew Jackson, whose conception of Indian policy was best expressed in his defiance of Supreme Court rulings protecting tribal rights and his forced removal of peaceful and successful tribes from east of the Mississippi. The Commissioner's first annual report suggested that the basic problems were breaking the power of tribal leadership and ending common ownership of tribal lands. With brief interludes of reform, these objectives have been dominant themes in Indian policy from that day to this.

The Bureau of Indian Affairs is built around a tradition of failure and continually adds to its record of inflexible, endlessly detailed, paternalism. Any serious attempt to cope with the miserable schools, the economic depression, and the social decay that characterize reservation life will demand drastic action to renew and redirect the agency responsible for representing Indian interests within the Federal Establishment and for directing tribal life on the reservations. I believe that nothing short of abolishing the BIA and reconstituting a new Indian Development Agency in a new organizational setting and responsible to new congressional committees will succeed in ending the cycle of ineffective and inefficient management of Indian policy. For important administrative and political reasons, I believe that the new agency should be established within HEW, under the leadership of an Assistant Secretary for Indian Development.

Exposes of reservation life are a perennial feature of American political discussion. Eighty-eight years ago Helen Hunt Jackson published her classic attack on the betrayal of Indian rights, "A Century of Dishonor." She wrote:

> President after President has appointed Commission after Commission to inquire into and report upon Indian affairs, and to make suggestions as to the best methods of managing them. The reports are filled with eloquent statements of wrongs done to the Indians * * *. These reports are bound up with the Government's annual reports, and that is the end of them.

In the 19th century the Indian service was a patronage dumping ground for unscrupulous politicians. In the 20th it has become the refuge of incompetent civil servants. The blatant corruption and victimization of the last century has given way to ossified mediocrity. The Indian affairs and appropriations subcommittees of Congress, in the absence of effective executive leadership, take only sporadic interest in Indian policy. This situation has produced wild and confusing oscillations of policy and has brought repeated returns to bankrupt and simplistic policy assumptions. Thus, although division of Indian property into individual holdings had time after time been merely the prelude to rapid white takeover of Indian resources, the policy continued during the early decades of this century and was resurrected as the central objective during the Eisenhower administration. To many Indians, Interior Secretary Hickel's recent comment that Indians should "cut the cord" and get rid of the "crutch" of the reservation system sounds like yet another reversion to an old and disastrous approach.

Indian people have retained control of existing reservations only by stanchly resisting proposal after proposal which would have threatened tribal ownership. The fact that Congress and often the Indian Bureau itself have announced these programs as useful reforms makes tribal leaders justifiably suspicious of any proposal for change. They tend to prefer a bad status quo which they understand to a change that might bring complete disaster. Thus any basic changes in organization should take place only after full discussion with Indian represenatives and only with very concrete and explicit guarantees of existing Indian rights.

Three things, it seems to me, are essential parts of the redirection of Indian policy. First, both Congress and the executive branch must discard the hope that incremental growth of existing programs will ever solve the Indian problem and be prepared to commit substantial resources to new attacks on such persisting problems as unemployment and poor schools. Second, a decision must be made to devolve a good deal of authority to tribal leadership and the new policy must be administered by staff members who really believe in it. Third, the Indian Bureau must be replaced by a new agency which has visibility, access to top leadership, and support from an important Cabinet member as well as the congressional committees which control its program. Reorganization would be an important part of the change, but it would be an illusion to think that merely reshuffling the organizational structure, without a broader commitment, would suffice.

It is hard to think of my good reason why the Bureau of Indian Affairs should remain in the Interior Department. Interior is an old-line unimaginative agency very heavily preoccupied by the political struggles over Federal lands in the West and by a variety of resource management tasks. Coping with human problems and community development are not basic parts of the Department's mission and its record has been very poor. In the 19th century, when the Federal Government had no significant agencies dealing with education and social problems and when Indian affairs was primarily concerned with questions of land, there was some logic for moving the Bureau from the War Department to Interior. Today, however, Indian affairs is an obvious anomaly in the midst of a bureaucracy concerned with unrelated problems, dangerously isolated from professional expertise in many fields critical to its mission.

An analysis of the BIA budget rapidly demonstrates the divergency between Interior Department and BIA programs. By far the largest portion of the budget is allocated to education. This effort has demanded half or more of BIA expenditures recently. The second largest expenditure is already administered outside Interior; it is the health program and it is handled by HEW officials. Among other major BIA programs, welfare and job training rank high on the list. Stimulated in part by the inadequacies of the Indian Bureau, the poverty program has undertaken a sizable community development program, HUD has belatedly entered into the business of providing some new reservation housing, and Congress has transferred increasing amounts of the school budget to HEW's Office of Education. Even this cursory review is enough to indicate that Indian programs are now divided in leadership and subject to considerable administrative confusion.

The administrative difficulties are mirrored in Congress since jurisdiction of congressional committees tends to be largely determined by the structure of the executive departments. BIA's location in the Interior Department means that Indian policies and programs are decided by the House and Senate Interior Committees. These are low status committees offering few political rewards for most members and thus they are composed largely of either newcomers lacking seniority or men from western public land States who can make political mileage representing business and community projects which are dependent on Interior Department cooperation. There is not a single member on the present Senate Interior Committee from a State east of Wisconsin. Twenty-three of the 33 House Interior Committee members represent districts west of the Mississippi as do all but three of the 13 Indian Affairs subcommittee members. These men often also hold positions on more prestigious and visible committees and retain their Interior seats merely to help protect local interests. The constituencies represented on these committees tend to be far more conservative and far less sympathetic to social problems than those heavily represented on the House and Senate committees controlling HEW legislation. Because Indian legislation is normally passed by unanimous consent and rarely debated seriously on the House or Senate floor, the composition of the committees is decisive.

Given the fact that a shakeup of existing relationships is an essential part of the process of creating a new program, Congress and the executive branch still face a choice among several alternative proposals. The Hoover Commission's 1948 study of the BIA recommended transfer to the Federal Security Agency, the predecessor of HEW. "The education, health, and welfare activities of the Indian Bureau," the report argued, "would find kindred interests and staff in the Office of Education, Public Health Service, and Social Security Administration * * *." In a piecemeal and incremental fashion, Congress seems to have been moving in this direction.

The obvious organizational malaise of the BIA has produced a spate of proposals for change in the past 2 years. The most searching recent examination of Indian policy was made in the 1967 report of President Johnson's Task Force on the American Indian. This report agreed with the earlier Hoover Commission finding in recommending transfer of the BIA to HEW.

Since that time a variety of other proposals have been forthcoming, generated in part by Indian fears that transfer to HEW would set off a struggle in which each of HEW's constituent agencies would seek to absorb its small counterpart within BIA, thus scattering Indian programs and leaving no central focus or leadership. This is a legitimate concern. Administrators unfamiliar with Indian concerns and with little time available to deal with the diversity and complexity of tribal problems would probably be little improvement over the existing staff. Given the many unique problems and opportunities that occur in Indian communities, I believe that it is absolutely essential to have Indian programs very largely concentrated in a single visible agency. It should be as easy as possible for Indian people and leaders to understand and to communicate with the agency that plays so large a role in determining their destiny. Any transfer to HEW should be conditioned on clear Presidential assurances that the integrity of an Indian agency will be preserved and its position within the bureaucratic pecking order raised.

Recent studies of Indian affairs have also produced alternative organizational proposals calling for the creation of an Indian agency within the Executive Office of the President, for the creation of an independent commission or agency, or for the setting up of a Federal commission to assume interim control of Indian education. These proposals share a common awareness that something is seriously wrong and that the existing structure is so inadequate that organizational surgery is necessary. Each proposal has some apparent advantages, but each also has defects which makes it less useful than a transfer to HEW.

In a study prepared early this year for the new administration, Alvin Josephy, Jr., a prominent historian of Indian life, proposed creation of an Indian agency within the President's Office. When a President makes a new program one of his top priorities and is willing to use his own time and prestige to support it, the Executive Office can be a good location for a new effort. If these special conditions are not present I believe that the Executive Office is a poor location even in the short run. Over the long run, I think that it is highly unlikely that a major operating program can thrive from administration to administration in the Executive Office. Both the strength and the weakness of a location in the President's Office is the immediate effect the President's attitudes and priorities have on programs. A relatively small program, with strong backing from the President, can successfully compete in the struggle of the great departments for resources and power. If the President is uninterested an Executive Office agency lacks a visible and powerful Cabinet member with a strong constituency of his own to fight for its programs.

Public administration experts and many in Congress are opposed to overburdening the President with direct administrative responsibilities unless there is some overriding necessity. Most staffs in the President's office are concerned with supervising operating agencies and gathering information for the President rather than actually running programs. An operating agency within the President's Office is considered an abnormality and tends to set off jockying between departments for a transfer of authority. This pattern has been very evident in the recently successful battle by HEW and the Labor Department for control over the major programs of the OEO. In such a situation a great deal of the energy of the Indian program's leadership would be consumed merely in protecting the organization's autonomy. Thus, although a location in the President's Office has many apparent advantages in funding, in prestige, in staffing, and in organizational flexibility, it would probably not be a good choice for the Indian Bureau. In a country where Indian welfare has never been even near the top of the list of national priorities it is not very safe to select an organizational setting for Indian affairs which will work only if several successive Presidents gave the matter a good deal of personal attention. It seems a particularly weak recommendation in an administration where Indians were ignored in the choice of the Secretary of the Interior and patronage considerations seemed to be a dominant consideration in naming a Commissioner of Indian Affairs.

The independent commission proposal for managing Indian policy suffers from most of the same defects and has few of the advantages of the Executive Office location. Independent agencies, particularly those headed by multiheaded commissions, are notoriously ineffective and are very unsuccessful in their efforts to obtain increased funds from Congress. Few commissions have clear or decisive leadership. Since commission positions tend to be for several years and to overlap in time of appointment, it is a lengthy and difficult process for a new approach to filter through. Lacking any clear structure of leadership or responsibility, commissions generally come to rely on senior bureaucrats to make their decisions. Because the responsibility is divided and change is difficult, positions on commissions are not appealing to able executives. The assignments tend to become minor political rewards for time servers quite content to let the bureaucracy run itself. Since no one in Washington with power and prestige is responsible for the independent commission, no one fights for it in the sharp intra-administration battles for scarce resources.

If a reorganization is to be undertaken, then, transfer to HEW seems the most useful step. Such a transfer would, in addition, tend to change the whole environment in which Indian policy would take shape. Except for the most important and most highly politicized issues of a particular time, most policy decisions are made in most programs by a policy "subsystem" composed of the concerned bureaucracies, the congressional subcommittees and committees which they are responsible to, and the various organized constituencies interested in and informed about the program. In Indian affairs these constituencies tend to be weak, understaffed, and without much political power. Thus the bureaucracy and the committees play the decisive roles. In moving to HEW Indian Affairs would move out of a subsystem built around western politics and struggles over resource use into a system where the major participants are intimately familiar with and vitally concerned about problems of education, community development, and welfare which are so acute in Indian communities. In the new situation, it might be possible for Indian groups to form alliances and draw on the resources of the powerful private groups involved in educational and welfare politics. Transfer would by no means guarantee a solution to Indian problems. It would, however, provide a new environment in which some of the failures of the past could be frankly discarded by men who have no vested interest in justifying them and in which new efforts and new ideas would receive more ready support.

One final advantage of transfer might be greatly increased ability to deal with chronic and long-ignored problems of urban Indians. Because most present Interior Department programs are built around a necessary connection between the recipient and reservation land, the BIA has been notoriously ineffective in serving the hundreds of thousands of Indians now living in city slums. Tying benefits and rights to reservation status rather than tribal membership is generally illogical and often counterproductive. Transporting a problem a couple of hundred miles makes it no less a problem and should not provide an excuse for Federal abdication. Surely the land-status definition of Indian rights which seems plausible within Interior would be subjected to a searching reexamination in HEW.

III. The Policy of Termination

A. Department of Interior Position Paper

U.S. Department of the Interior,
Bureau of Indian Affairs,
Washington, D.C., October 17, 1969.

Hon. Ralph Yarborough,
U.S. Senate, Washington, D.C.

Dear Senator Yarborough: As I informed you in my letter dated October 7, I requested my staff to review the past history of the issue of termination. Enclosed you will find a list of tribes or group who moved from Federal trusteeship by acts of Congress since the House Concurrent Resolution 108 amendment was passed by the 83d Congress. This list includes information on membership, land area, and date that the Federal trust relationship was terminated.

There is also included a legislative history sheet for each tribe or group named in the above list, covering negotiations in developing proposed legislation, implementation of provisions of the act, and current situation of terminated tribes and individual members. As the termination acts did not call for close termination followup on the part of the Bureau once the Federal trust relationship ended, information on the results of the termination program for a particular tribe has been very limited. Followup studies have been made mostly by outside organizations of some of the groups, such as the Menominee and Klamath Tribes. My staff is presently engaged in an assignment to determine present status of tribes and groups that have been terminated.

Also included in this enclosed material is a list of tribes for whom termination bills had been introduced but not enacted, as departmental proposals or tribal proposals. Also included is a status report of other termination legislation proposals considered by recent Congresses. Also, you will find the 1906 Five Tribes "Termination" Act.

In 1957, the Bureau prepared reports on the administration of termination acts affecting three groups: The Paiute of Utah, the Western Oregon Tribes, and the Alabama-Coushatta Tribes of Texas. Each report contains a narrative account of the original and administration of the act, with an explanation of problems encountered and how they were resolved. Copies of the three reports are also included.

I am of the opinion that the termination issue is of such great importance to the Indian people that it could not be approached lightly. This administration is on record that it will not be a termination administration and that it is dedicated to enacting and not destroying that special relationship that exists between the Indians and the Government.

This information should answer the questions which you posed during the subcommittee hearings.

Thank you for your sincere interest in Indian affairs.

Sincerely yours,

Louis R. Bruce,
Commissioner.

HISTORICAL BACKGROUND ON TERMINATION

The 83d Congress, on August 1, 1953, adopted House Concurrent Resolution 108 establishing formally a policy of gradual elimination of Federal trusteeship and of the special services provided by the Bureau of Indian Affairs to Indians. The resolution provided that "it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship."

Termination legislative proposals were first actively considered in the 83d Congress in response to the above resolution. In the 83d Congress, twelve bills were introduced, and of this number, six were enacted into law in 1954. The matter of releasing Indians from Federal controls however had been an important concern for congressional and administration study and action long before the 83d Congress as indicated later in this report.

Federal practices regarding termination have fluctuated from one extreme to another since the origin of the Bureau. Through the years, Government actions reflected different approaches and intensities of interest in achieving the ultimate goal of complete Indian self-sufficiency.

Evidences of interest during the last century and in the early years of this century in the termination of trusteeship of the Indians are documented in such papers as treaties, bills, resolutions, annual reports of Commissioners of Indian Affairs, and in statements at congressional hearings.[1] These documents indicate the persistence of such thought and its existence in varying degrees of strength and influences before the declaration policy in 1953 by the 83d Congress. They demonstrate that House Concurrent Resolution 108 was no sudden "flash-in-the-night" declaration, but, instead was the culmination of an opinion or sentiment which had gradually been gaining through the years.

The following is an historical rundown of pre-1953 termination efforts:

When the Europeans arrived on the continent they dealt with the Indian tribes by treaty, as separate nations. The Federal Government followed this practice after it was formed. It was anticipated that the Indians would gradually be assimilated, that their communities and those within the colonies would intermix. When this did not occur as soon as expected, the Indian tribes on the eastern coast were removed further westward. When the western lands to which the Indians were moved were needed for further national expansion, the Indians were placed on reservations.

With the end of the treaty period in 1871, the national policy mounted to disregard tribal leaders, to allot land to individual Indians, and to break up the tribal estate and thus "assimilate" the Indians.

In pursuance of this policy, Congress passed the General Allotment Act in 1887, which became the keystone of Federal Indian policy until the 1920's. Competency commissions were established to determine the qualifications of Indians to manage their own affairs independently of Bureau supervision. The allotment program officially ended in 1934 with the passage of the Indian Reorganization Act (48 Stat. 984), althought actual allotments were considerably curtailed in 1920. The allotment plan resulted in a destruction of the Indian's economy and a demoralization of his social order. By 1933, over 90 million acres, or two-thirds of the Indian land base of 1887, and generally the most productive, had been lost, and some 90,000 Indians were landless.

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[1] A set of documents, numbering some 45 items, is on file in the Branch of Tribal Operations. No attempt was made to evaluate the significance of the individual items when compiled in 1957. All are a matter of public record and many of them are presumably well known to Indians and others interested in Indian affairs.

During the period 1926–28 the Institute for Government Research carried out a comprehensive survey of Indian affairs, commonly known as the Meriam Report. Positive recommendations were made, which were basic to the new Indian policy that was to follow. Among other things, they stressed the need for a realistic educational program adopted to the problem of reservation life, a sustained and coordinated economic planning and development, the strengthening of community life, and clarification of the law and order function on Indian Reservations.

From 1929 to 1934, a subcommittee of the Senate Committee on Indian Affairs conducted a widespread survey of the conditions among the Indians of the United States. These two surveys had a very important impact upon the subsequent development of policies and programs in the administration of Indian affairs.

Indian Reorganization Act of 1934.—With the passage of the IRA, the United States again reversed its position by bringing its program to individualize its relations with Indians to an end, and instead revitalizing tribal organizations and Indian community life. The IRA was the most comprehensive law relating to Indians since the 1887 General Allotment Act, and laid the foundation for yet another new Indian policy. Tribal leaders were strengthened and the formation of governing bodies was encouraged.

The long-range policy favoring eventual assimilation remained the same. Only the method had changed. The prevailing philosophy after the allotment experience was that assimilation would occur more rapidly if the Indian communities were again encouraged to prepare to take their places among the many local communities throughout the Nation.

Assessments of the IRA have been controversial, but some things that worked without apparent pressure on the Indians during the Collier administration (1933–45), and immediately thereafter, aroused Indian fears when termination pressure appeared in the late 1940's and the 1950's.

In 1940, Assistant Commissioner McCaskill summed up the trend in Indian administration under Commissioner Collier as follows: [2]

> We see the Indian Office divesting its authority into three directions: first among other agencies of the Federal Government which have specialized services to render; second among the local, State, and county governments, which are much more closely associated with the problems in some areas than Washington can be; and finally among the tribal governments which have organized governing bodies, and which ex-

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[2] Joseph C. McCaskill, "The Cessation of Monopolistic Control of Indians by the Indian Office," as cited in "A Sketch of the Development of the Bureau of Indian Affairs and of Indian Policy" (mimeographed) 1956, p. 13.

> pect eventually to take over and manage all of the affairs of the Indians. Perhaps thus, but not at once, it may be found possible to cease special treatment, special protective and beneficial legislation for the Indians, and they shall become self-supporting, self-managing, and self-directing communities within our national citizenry.

Termination put tribes under pressure to accomplish more rapidly what the IRA sought to bring about gradually. Under a method referred to as "piecemeal" termination, a number of proposals were offered to turn what had been special services to Indians over to Government agencies that performed the same or similar services for non-Indians. During the Collier period, Johnson-O'Malley type legislation, transferring specific responsibilities to the several States, accomplished similar goals gradually without upsetting the Indians.

Termination philosophy buildup in the 1940's.—A high point in congressional termination philosophy came in 1944 when both houses of Congress had reached about the same basic conclusion that they did not want the special status of Indians to be unduly prolonged and questioned why more tribes had not advanced further with self-government and managing their own business affairs as their constitutions and charters would allow. The cost of administering Indian affairs under the IRA and the possible buildup of the Bureau to perpetuate itself indefinitely also concerned the Congress.

Following World War II, pressure to decentralize Indian administration and to spread the functions formerly held by the Bureau grew to include many State and Federal agencies not previously concerned. It was a stormy transition period, leading to the development of a policy aimed ultimately at the elimination of the Bureau of Indian Affairs.

In 1944, the Senate Indian Affairs Committee proposed a "long-range" program for the gradual liquidation of the Bureau of Indian Affairs. The Bureau began its own investigation by developing 10-year postwar reservation planning programs.

Withdrawal Program of 1947.—On February 8, 1947, in response to the Senate Committee on Civil Service request for suggestions as to how personnel and expenses in the Indian Bureau might be reduced, Acting Commissioner Zimmerman submitted a tentative program for the gradual withdrawal of Federal control and supervision over the affairs of the American Indians.

The Bureau undertook to suggest a fair and equitable basis upon which the Government might measure its responsibility toward a tribe and so determine when it might withdraw as trustee: (1) The degree of assimilation of a tribe, as indicating acceptance by the Indians of white habits and acceptance of the Indians by the white community; (2) economic condition of a tribe, to indicate a reasonable possibility of gaining a livelihood through use of available resources; (3) willingness of the tribe to dispense with Federal aid and guidance, and (4) willingness and ability of States and communities to provide public services.

These four factors were considered by the Bureau in preparing a list of tribes by their degree of readiness: Group 1 consisted of some 10 tribes and groups, numbering approximately 10,000 Indians, who were at the point where, at an early date, Federal supervision could be curtailed or eliminated. A second group, consisting of some 20 jurisdictions, affecting an estimated 60,000 Indians, requiring a period of adjustment from 5 to 10 years. A third group, consisting of some 35 jurisdictions, where conditions with respect to all four factors were unfavorable, and continuing Federal assistance for an indefinite period seemed unavoidable. The Bureau submitted suggested legislation for tribes in group 1.

A "paper" presented by Assistant Commissioner John H. Provinse before the National Conference of Social Work at San Francisco, April 15, 1947, describes the congressional consideration of Federal withdrawal from Indian affairs:

> Congressional hearings are, of course, going forward in both Houses of Congress on the whole problem of Federal withdrawal from Indian affairs, and I have no way of knowing what if any action will be taken as a result of the suggestions made by the Acting Commissioner, or whether any of the proposed legislation authorizing the removal of Federal supervision on any of the tribes will be enacted into law. From the nature of the bills which have so far come out of the committee before whom the Acting Commissioner appeared, the suggested tribal approach to the problem is entirely neglected and the congresssional effort seems to be directed toward liquidating the Indian Service primarily by transferring its various functions to other already existing agencies of the Federal Government. For example, bills are now before the Congress which provide for the transfer of Indian health work to the U.S. Public Health Service of Indian forestry and extension work to the Department of Agriculture, of Indian irrigation to the Bureau of Reclamation, and providing for the removal of restrictions upon the leasing of all allotted Indian lands and upon all individual Indian money. So far I have not seen bills requiring the transfer of welfare work to the Federal Security Agency, or school work to the Office of Education, but I should not be surprised if such bills were introduced soon.

Mr. Provinse concluded his paper with the following remarks:

> * * * The proposal of the Acting Commissioner made this year is one of the most important recent statements of departmental policy and should legislation be passed by the present Congress the year 1947 may well become a date in Indian-Government relationships comparable with the years of 1871, 1887, 1934. It is my guess that the present interest on the part of the Indians and on the part of congressional committees is neither temporary nor superficial, and from it can well come a program of tribal and individual liberation, or freedom, or emancipation, or whatever you want to call it that will begin in a serious way the removal of trusteeship from the peoples whose ancestors 300 and 400 years ago owned and controlled the vast expanse of this great country, and whose descendants have passed through various stages of friend, enemy, ward, and hero.

In addition to the general and specific withdrawal bills on a tribal basis, the Bureau had submitted for consideration an individual relinquishment bill which would have enabled any individual Indian, no matter what his tribal affiliation, whether in one or another of the three groups, to relinquish his ties to the Federal Government.

Although Acting Commissioner Zimmerman's report for the year ending June 30, 1948, does not discuss termination at length, he described a reservation program project then underway as follows:

> The present endeavor, announced in instructions to field personnel in April 1948, is to proceed with plans for a limited number of reservations divided into three categories: (a) Areas in which the Indians have progressed in the use of their resources and in adapting themselves to competitive society to such a degree as would warrant the withdrawal of the Indian Service in the near future; (b) reservations in an intermediate state, and (c) reservations in need of major rehabilitation continued over a period of years. In the first group are included the Klamath Reservation, Oreg., and most, if not all, of the Indians in California and Minnesota. The second group includes Pine Ridge, S. Dak.; Standing Rock in North Dakota and South Dakota; and Fort Berthold, N. Dak. Two reservations are included in the third group, Papago, Ariz., and Turtle Mountain, N. Dak.

Withdrawal Programing, 1950.—Two long-range objectives to which the Bureau should prepare to give more intensive effort are stated in Commissioner Dillon S. Myer's annual report for 19[illegible]: (1) A standard of living for Indians comparable with that enjoyed by other segments of the population, and (2) the step-by-step transfer of Bureau functions to the Indians themselves or to appropriate agencies of local, State, or Federal Government.

Although comprehensive studies of Indian economic and social conditions on reservations had previously been undertaken (such as surveys in 1935 to 1939 in cooperation with the Soil Conservation Service and reservation program reports in 1944 and 1948), it was not until 1950 that surveys were undertaken on a reservation basis for the specific purpose of determining Indian qualifications to manage their own affairs without further supervision of the Bureau and to ascertain the possibilities of complete Bureau withdrawal.

Early in 1951, a small staff undertook preliminary and exploratory measures in the direction of withdrawal programing. Areas thought to offer most promise of immediate progress were selected for initial attention. California Indian groups, previously highly ranked in the 1947 listing, were chosen for the first survey.

In November of 1951, a Division of Program was established to work closely with other units of the Bureau. Staff members continued the approach of studying individual reservation situations and extended their efforts to include areas thought to require intermediate and longer periods for withdrawals to be realized.

In 1952, under House Resolution 698 of the 82d Congress, the Comissisoner was requested for a complete report on withdrawal programing. Commissioner Myer's directive of August 5, 1952, to all

Bureau officials, resulted in an overall inventory of problems as they related to over 200 different Indian tribes, bands, or groups, as a guide to withdrawal programing. A four-part inventory checklist was devised for this undertaking. These problems included the heirship status of some 38 million acres of land; property of many Indian groups; lack of health, educational, and other training opportunities.

The Commissioner's memorandum emphasized the principle of consultation with the Indians, that "withdrawal program formulation an effectuation is to be a cooperative effort of Indian leaders and community groups affected, side by side, with Bureau personnel. * * * In addition * * * I wish also to stress Indian participation with respect to negotiations with States, political subdivisions of States, and Federal agencies, where such negotiations relate to Bureau withdrawal."

The field reports were coordinated by the Program Division and the Bureau's final report was forwarded to the House Committee on Interior and Insular Affairs on December 3, 1952. The Bureau informed the committee that it was "extremely difficult to make a flat statement on which tribes * * * are now qualified for full management of their own affairs." However, the Bureau listed 18 States where it was then carrying on intensive programing activity among Indian tribes to prepare them for withdrawal of Federal supervision. The Bureau's report appears in House Report 2503, 82d Congress, second session.

The committee recommended the following policy on Indian administration in its report to the House (p. 124, H. Rept. 2503):

> It is the belief of the committee that all legislation dealing with Indian affairs should be directed to the ending of a segregated race set aside from other citizens. It is the recommended policy of this committee that the Indians be assimilated into the Nation's social and economic life. The objectives, in bringing about the ending of the Indian segregation to which this committee has worked and recommends are: (1) the end of warship or trust status as not acceptable to our American way of life, and (2) the assumption by individual Indians of all the duties, obligations, and privileges of free citizens. The committee realizes that these objectives cannot be accomplished "overnight," but recommends a constant effort in that direction, with careful and earnest consideration always given to the rights of the Indians.

During Myer's administration (1950–52), agreements had been reached with more than 43 bands and groups of Indians in western Oregon, and with 115 identifiable bands and groups in California looking toward termination of Federal responsibilities and services as provided through the Bureau.

On March 25, 1953, the House of Representatives, of the 83d Congress, passed House Resolution 89 to continue the investigation of Indian Bureau activities which were initiated in the 82d Congress. A Special Subcommittee on Indian Affairs was appointed to conduct the proposed study.

One part of Commissioner Myer's 1952 inventory checklist of withdrawal programing had requested a listing of Indian groups considered ready for withdrawal of Bureau responsibility. From the Bureau report submitted to the House Committee on Interior and Insular Affairs in the 82d Congress, the special subcommittee compiled a full list of tribes, bands, groups, immediately eligible or ineligible to manage their own affairs. Some 182 tribes (exclusive of California rancherias) were listed, of which 68 were declared to be immediately ready to manage their own affairs. The list appears on pages 3 and 4 of House Report 2680, 83d Congress, second session (1954).

The special subcommittee also considered States where further Bureau operation should be discontinued and recommended as follows:

> On the basis of the groups, tribes, bands, etc., named by the local Indian Bureau officials themselves, necessary legislation and administrative steps should be taken to effect discontinuance of further operation of the Bureau of Indian Affairs (either by transfer of responsibility for management and supervision over their lives and property directly to individual Indians or groups, to Federal agencies supplying to non-Indians services needed by some Indians, or to the States and local governmental subdivisions) in the following States: California, Michigan, Nebraska, South Carolina, Texas, and Wyoming. Conclusions reached at the local Bureau level may not, of course, coincide with committee conclusions which might be reached after full hearings nor with local findings that all tribes in all named States are found eligible for termination.

Adoption of House Concurrent Resolution 108, 83d Congress.—On March 13, 1953, as a result of conferences between Assistant Secretary Lewis of the Department of the Interior and the chairmen of House and Senate Indian Affairs Subcommittees, with a subsequent conference between Assistant Secretary Lewis and Secretary McKay, the Assistant Secretary advised the House and Senate subcommittees by letter as follows:

> Federal responsibility for administering the affairs of individual Indian tribes should be terminated as rapidly as the circumstances of each tribe will permit. This should be accomplished by arrangement with the proper public bodies of the political subdivisions to assume responsibility for the services customarily enjoyed by the non-Indian residents of such political subdivisions and by distribution of tribal assets to the tribes as a unit or by division of tribal assets among the individual members, whichever may appear to be the better plan in each case. In addition, responsibility for trust properties should be transferred to the Indians themselves, either as groups or individuals, as soon as feasible.

On August 1, 1953, House Concurrent Resolution 108 was adopted by both the House and the Senate, establishing formally a policy of gradual elimination of Federal trusteeship and of the special services provided by the Bureau of Indian Affairs to Indians.

House Report No. 841 on House Concurrent Resolution 108 stated that current Indian bills had "two coordinated aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and, second, termination of the subjection of Indians to Federal laws applicable to Indians as such." The report outlined the five principles of legislation.

The special subcommittee, pursuant to House Resolution 89, made the following recommendation on the Bureau's role in carrying out the mandate in 108 (H. Rept. 2680, p. 10):

> Today the problem of Indian wardship is still with us and growing steadily more expensive and expansive. The Indian Bureau has been charged with the guardianship of Indian property in addition to the responsibility of preparing the Indians for full citizenship. The passage of House Concurrent Resolution 108 had charged the Bureau of Indian Affairs with the responsibility of preparing Indians for full citizenship as rapidly as possible. Since, however, the subcommittee feels that the Indian Bureau as an organ of the Federal Government specifically charged with the function of administering Indian affairs and property will not of itself initiate the necessary steps to terminate its own services through assisting individual Indians to become full citizens, it recommends transfer of certain Indian Bureau functions to other Federal agencies with a view to making it possible for the Bureau to concentrate more effectively on the mandate embodied in House Concurrent Resolution 108.

Withdrawal programing and the newly formulated termination policy sent a wave of apprehension through many Indian tribes, especially those who were most immediately concerned. In some tribes there developed cleavages—factions that favored and factions that opposed termination.

By 1954, the resistance to the termination policy was in full swing, particularly among Indian groups and friends of the Indian groups, and many spoke out strongly against too rapid termination. The Governors' Interstate Indian Council, favorable to termination until 1953, grew more cautious in 1954 and set up minimum conditions that should be met by the Federal Government prior to termination.

The issue of termination continued to haunt Indian tribal groups, although in 1958, Secretary of the Interior Fred A. Seaton assured the Indian people that he interpreted the intent of Congress, as expressed in House Concurrent Resolution 108, as a statement of ultimate objective—not an immediate goal.

The Secretary stated that his own position was that "no Indian tribe or group should end its relationship with the Federal Government unless such tribe or group has clearly demonstrated—first, that it understands the plan under which such a program would go forward, and second, that the tribe or group affected concurs in and supports the plan proposed * * * under no circumstances could I bring myself to recommend the termination of the Federal relationship with any Indian tribe in this country until the members of that tribe have been given the opportunity of a sound and effective education. To me it would be incredible, even criminal, to send any Indian tribe out into the stream of American life until and unless the educational level of that tribe was one which was equal to the responsibilities which it was shouldering."

In the 86th Congress, first session (1959). Senate Concurrent Resolution 12 and House Concurrent Resolution 93, supporting the Secretary's position were adopted.

During the above period (1953-60), the administration placed emphasis primarily on the objectives of universal education for Indian people, utilizing the public schools to the maximum extent possible, and on the attainment of economic parity for the Indians throughout the country, primarily through a shift to increased dependency on off-reservation resources. Tribes were encouraged to improve and expand the management of their own affairs and to help themselves to the greatest extent possible. On April 12, 1956, Commissioner Emmons had issued a directive to all area directors and superintendents setting forth the mechanics and procedures in implementing Federal Indian policy. The field was instructed to develop forward-looking programs through the consultation process at each tribal jurisdiction.

The Commissioner commented: "I emphasize the important thing is for each group to have as a goal, with or without legislation, the development of the group to the point where, from a realistic point of view, special services or assistance because of Indian status will no longer be necessary."

Although the policy expressed in the memorandum remained in force through the closing years of the decade, its actual implementation in the form of well-defined, formalized, long-range programs met with very limited success, partly because program planning of this type was identified with termination by many Indian tribes.

1961 to the present.—The 1961 Interior Department task force expressed the view that the Bureau in the recent past overemphasized the objective of termination of Federal services to Indians. The task force recommended that emphasis be placed instead on developmental programs designed to assist tribal groups to advance socially, economically, and politically, to the point where special services are no longer justified. The responsibility of the States, counties, and municipalities for the provision of services to Indians, wherever the latter are entitled to such benefits, was stressed by the task force, and it was pointed out in the report that Federal services should not duplicate State and local programs to the extent that the latter are applicable to Indians. The intent was to place emphasis on programs designed for the maximum development of natural and human resources on the reservation.

In the 87th Congress, first session (1961), House Concurrent Resolution 169 was introduced categorizing the tribes into three groups: (1) Those with relatively uncomplicated problems requiring few services from BIA, (2) those with more complicated problems requiring additional planning and who need further Federal services to prepare them for termination, and (3) those tribes requiring longer range planning requiring maximum Federal assistance. The Department did not report on this resolution.

While Congress has not repudiated the policy expressed in House Concurrent Resolution 108 of the 83d Congress completely, it was somewhat modified in the 90th Congress by the Senate's passage of Senate Concurrent Resolution 11 on September 11, 1968. In addition, the Congress has provided for the "consent" of the Indians in the most recently enacted legislation regarding the removal of Federal supervision.

In a special message to Congress on Indians, on March 6, 1968, President Johnson proposed a new goal for our Indian programs. "A goal that ends old debate about 'termination' of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes self-help * * *."

The present administration's policy on termination was stated on September 27, 1968, when, during the presidential campaign, presidential nominee Richard M. Nixon said: "The special responsibilities of the Federal Government to the Indian people will be acknowledged. Termination of tribal recognition will not be a policy objective and in no case will it be imposed without Indian consent."

Secretary of the Interior Hickel, appearing before the National Congress of American Indians in Albuquerque, on October 8, 1969 made these remarks:

> Government, in my judgment, has not met its responsibilities in helping you to secure your goals. In this respect, and before I go any further, I want to make one thing crystal clear: This administration is dedicated to improving—not destroying—that special relationship that exists between Government, the Indians, and the land.
>
> We are not a protermination administration. * * * Neither I nor this administration have a protermination policy. Such a policy can only be established by the Indian community itself, through a clear mandate on the part of your people.

Quoted below are excerpts from Commissioner Bruce's remarks before the 25th anniversary convention of the N.C.A.I., October 9, 1969:

> * * * As Commissioner I want to get Indians fully involved in the decisions affecting their lives; then to get the Bureau of Indian Affairs to be totally responsive to Indian needs; and to develop a climate of understanding throughout the United States which will permit the full development of Indian people and their communities without the threat of termination. All of these tasks are of equal importance and must be pursued with diligence and at once.
>
> * * * I accepted the appointment of Commissioner, with the commitment and understanding that this administration was not going to become a termination administration and that I would have the fullest high-level cooperation in my efforts to reorganize the Bureau of Indian Affairs. I have been given these assurances.
>
> Secretary Hickel strongly emphasized this in his speech last night, and Assistant Secretary Loesch has stated publicly on several occasions that this is not a termination administration.
>
> * * * * * * *
>
> We propose to undertake an extensive study of the Federal trust relationship to make it a more flexible instrument for Indian development while fully protecting Indian resources. I will invite Indian people, as well as other experts in In-

dian law; corporation law; and property law, to assist us in defining the best way to obtain this flexibility. This means a new role for the agency will become necessary to serve you.

* * * * * * *

The dramatic increase in kinds and levels of services from the Federal Government has had an extensive impact upon the lives of Indian people as well as the Bureau of Indian Affairs and has contributed to more meaningful and comfortable lives for thousands of Indians.

* * * * * * *

The Department of Interior and the Bureau of Indian Affairs will seek to serve as a spearhead for developing other agency programs for Indians. It is our intent to stimulate, facilitate, and support the direct involvement and planning between the Indian people and other agencies and departments.

* * * * * * *

Under our administration, the thrust of the Bureau will be to advocate and create improved conditions of Indian life and to activate Indian involvement in all matters affecting their lives.

* * * * * * *

I can pledge to you, that we will do everything in our power to make the Bureau a more flexible organization which will be responsive to Indian needs.

* * * On the broader issues of policy affecting Indian people, I shall call together Indian persons and Indian groups as well as other persons to look at specific issues which need new direction and new definition. Areas like education from preschool throughout adulthood; tribal governments; the basic rights of Indian people and legal services, the development of economically viable Indian communities; the identification of methods to make the broad range of community services available to Indian people; ways to enhance the development and creation of community institutions, and Indian control of such institutions; improved use of heirship lands, and a true look at Indian heritage, accomplishments, and contributions.

* * * * * * *

We invite you to join us as full partners in discussing, planning, and implementing programs and services to improve all the facets of Indian life.

President Nixon has pledged that "progress through participation on the part of the Indians is now the basis of this administration's efforts to make progress in every area of Indian affairs." Secretary Hickel also has underscored this pledge and I am determined that my performance as your Commissioner will warrant your confidence, patience, and support in achieving a program which will be beneficial to all of us.

83D CONGRESS
1ST SESSION

H. CON. RES. 108

IN THE SENATE OF THE UNITED STATES

Ordered to be printed as passed August 1, 1953

CONCURRENT RESOLUTION

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the State of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Attest:

LYLE O. SNADER,
Clerk of the House of Representatives.

Attest:

J. MARK TRICE,
Secretary of the Senate.

VII

TERMINATION LEGISLATION ENACTED BASED ON POLICY OF H. CON. RES. 108 OF AUG. 1, 1953

[Listed alphabetically]

Tribe and date of act	Date of termination	Membership	Tribal land (acres)
Alabama-Coushatta Tribes of Texas, June 23, 1954 (68 Stat. 768)	July 1, 1955	[1] 450	3,200.00
California rancherias and reservations, Aug. 18, 1958 (72 Stat. 619), Aug. 11, 1964 (78 Stat. 390).	35 racherias as of June 30, 1969.	1,107	4,315.50
Catawba Indians of South Carolina, Sept. 21, 1959 (73 Stat. 592)	July 1, 1962	[2] 631	3,388.00
Klamath Tribe of Oregon, Aug. 13, 1954 (68 Stat. 718)	Aug. 13, 1961	[2] 2,133	966,984.00
Menominee Tribe of Wisconsin, June 17, 1954 (68 Stat. 250)	Apr. 30, 1961	[2] 3,270	233,881.00
Ottawa Tribe of Oklahoma, Aug. 3, 1956 (70 Stat. 963)	Proclamation deferred until claim settled.[3]	[2] 630	0
Paiute Indians of Utah, Sept. 1, 1954 (68 Stat. 1099)	Mar. 1, 1957	[2] 232	42,839.00
Peoria Tribe of Oklahoma, Aug. 2, 1956 (70 Stat. 937)	Proclamation deferred until claim settled.[3]	[2] 640	0
Ponca Tribe of Native Americans of Nebraska, Sept. 5, 1962 (76 Stat. 937).	Sept. 4, 1965	442	834.00
Uintah and Ouray Ute Mixed Bloods of Utah, Aug. 27, 1954 (68 Stat. 868).	Aug. 27, 1961	[2] 490	211,430.00
Western Oregon Indians (60 bands), Aug. 13, 1954 (68 Stat. 724)	Aug. 18, 1956	[1] 2,081	3,158.00
Wyandotte Tribe of Oklahoma, Aug. 1, 1956 (70 Stat. 893)	Deferred by disposition of cemetery.	[2] 1,157	94.36
Total		13,263	1,469,123.86

[1] Estimate.

[2] Final roll.

[3] Although tribal claims determination has delayed formal termination of trusteeship of these tribes, it has been completed in most respects and tribal members are no longer receiving Bureau aid.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Alabama and Coushatta Tribes of Texas.
2. *Membership.*—450 estimated.
3. *Reservation.*—Alabama and Coushatta Reservation.
4. *Land area.*—3,200 acres.
5. *Tribal resources.*—Limited to the acres of forested land and assigned home sites. These Indians received minimal Bureau services. There was no agency on their reservation which was administered from the Muskogee Area Office in Oklahoma.
6. *Terminal motivation.*—These Indians were named in 108. The State of Texas agreed to take the 3,200 acres in trust for the Indians subject to the concurrence of a majority of the Indians to any proposal for disposition.
7. *Terminal legislation.*—Act of August 23, 1954 (68 Stat. 768).
8. *Summary of procedures and disposition of assets.*—The lands were turned over to the State of Texas to be held in trust for the Indians. A $40,000 indebtedness of the tribes to the United States was canceled. This termination program differed from others in that the Indians continue to be eligible for admission to schools and hospitals maintained for Indians. A corporate charter granted to the tribes under the IRA was revoked.
9. *Effective date of termination.*—July 1, 1955.
10. *Resultant impact.*—The Alabama and Coushatta Indians continue to live in the area of their reservation and there has been no exodus to the cities because of the above legislation. The Office of the Attorney General is making a summation stated that the transition of

tribal responsibility from Federal to State auspices was accomplished in a satisfactory manner to all concerned.

INDIAN TRIBES OR GROUPS TERMINATED—CALIFORNIA RANCHERIAS AND RESERVATIONS

1. *Tribe.*—There are dozens of "triblets" in California with a few organized tribes such as the Hoopa and Round Valley.

2. *Membership.*—There are an estimated 7,000 Indians living on trust lands in California, as compared to an estimated 74,442 "Indians of California"; 1,107 Indians have been terminated under the 35 completed distribution plans, and 448 others with 6,330 acres of land are in the process.

3. *Reservation.*—There were 115 rancherias and/or reservations in California, with 35 terminated and four sold under the Rancheria Act.

4. *Land area.*—4,315.5 acres were removed from trust under the distribution plans and 300 acres of unoccupied lands were sold.

5. *Tribal resources.*—At best the terminated rancherias served as homesites with few other resources. The Indians occupying these lands make their living by wage work in the nearby communities. Only the Hoopa Reservation has extensive timber resources.

6. *Terminal motivation.*—41 rancherias were named in the 1958 act—each of these rancherias requested that they be named in order that they could get title to their lands. The 1964 amendment permits any group in California living on trust lands to petition for partitionment. The process is voluntary and seven rancherias have applied for distribution plans under the 1964 amendment. The policy of the Government since the early 1940's was to "get out of business" in California, and the State is named in House Concurrent Resolution 108. However, the State legislature recently petitioned the Congress to extend full Bureau services to California Indians.

7. *Terminal legislation.*—Act of August 18, 1959 (72 Stat. 619) as amended by the act of August 11, 1964 (78 Stat. 390).

8. *Summary of procedures and disposition of assets.*—The Indians living on trust lands request a distribution plan. The plan is developed with Bureau assistance and includes the names of distributees, provisions for improvements such as roads, sanitation systems and others deemed necessary: surveys of individual parcels, appraisals, etc. If the provisions of the plan are accepted by a majority of the distributees, the plan is carried out. The lands and other assets are distributed equally among the distributees with some improvements (the sanitation system) and some land (cemeteries and community building sites) held by the group in common.

9. *Effective date of termination.*—The provisions of a distribution plan are to be carried out within 3 years.

10. *Resultant impact.*—Most of the Indians who were living there at the time of distribution remain on the land. Their economic lot has not improved however, and some are having difficulty maintaining their water systems and other community property. The California Indian Legal Services is quite active, through lawsuits, to get the BIA and IHS programs reestablished for the terminated Indians.

LIST OF TERMINATED CALIFORNIA RANCHERIAS

1. Buena Vista
2. Cache Creek
3. Paskenta
4. Ruffeys
5. Strawberry Valley
6. Table Bluff
7. Alexander Valley
8. Chicken Ranch
9. Lytton
10. Mark West
11. Mooretown
12. Potter Valley
13. Redwood Valley
14. Redding (Clear Creek)
15. Guidiville
16. Robinson
17. Scotts Valley
18. Big Valley
19. Cloverdale
20. Graton
21. North Fork
22. Picayune
23. Pinoleville
24. El Dorado
25. Elk Valley
26. Rohnerville
27. Blue Lake
28. Indian Ranch
29. Nevada City
30. Wilton
31. Greenville
32. Quartz Valley
33. Chico (Meechupta)
34. Smith River
35. Auburn

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Catawba Indians of South Carolina.

2. *Membership.*—Final roll: 631 members.

3. *Reservation.*—The Catawba Indians Reservation.

4. *Land area.*—3,388 acres.

5. *Tribal resources.*—The land was divided into four parcels; two of which were used for homesites, with limited soft pine on the other two. There was a tribal herd which was sold. The appraised value of the tribal estate was $187,774.

6. *Terminal motivation.*—The catawbas asked for termination in order to receive title to their homesites. The act provided that its provisions must be accepted by a majority of the members before it became effective. They accepted the terms of the act on February 6, 1960.

7. *Terminal legislation.*—The act of September 21, 1959 (73 Stat. 592)

8. *Summary of procedures and disposition of assets.*—Each member was given the option of taking his share in land or in cash. A total of 345 chose land and 286 elected to receive cash. Members were given preference to select land they had been using as homesites, and family members were allowed to select their land in a block. Quitclaim deeds were issued to those choosing lands; the remaining lands were sold and the proceeds divided among those electing to receive cash.

9. *Effective date of termination.*—July 2, 1960.

10. *Resultant impact.*—Most of those choosing land remain on the reservation and make their living from wage work in nearby Rockhill. Several new homes were built. The tribe continues to operate under a former IRA Constitution without Federal control. The State holds in trust for the Catawbas 600 acres of land adjacent to the deeded land. A limited amount of money comes to the Catawbas through the sale of arts and crafts, which were received during the termination

process. The Catawbas no longer speak their native language: more than half the spouses are non-Indians so there is considerable communication and joint efforts with the surrounding community.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Klamath Tribe (Klamath and Modoc Tribes and Yahooksin Band of Snake Indians).

2. *Membership.*—Total enrollment, per final roll: 2,133.

3. *Reservation.*—Klamath Indian Reservation, Oregon.

4. *Land area.*—Tribal 962,662 acres, allotted 104,322 acres, total trust lands 966,984.

5. *Tribal resources.*—Forest lands, approximately 694,000 acres, major resource. Tribal lands and properties appraised at $90,791,123. Pro rata share value approximately $43,500.

6. *Terminal motivation.*—

1910—Bills introduced opening reservation to settlement.
1916—Proposals for disposal of tribal timber and timberlands.
1920—Bills introduced for land allotments.
1932—Bills introduced to incorporate Klamath Indian Tribe.
1946—Bills introduced to remove restrictions on the property of members and tribe.

Removal of Federal trusteeship requested by competent groups who wanted their share of tribal assets on basis they could better manage their individual interests.

7. *Terminal legislation.*—Act of August 13, 1964 (68 Stat. 718), with five amendments.

8. *Summary of terminal procedures and disposition of assets.*—Adults given opportunity to elect for themselves and their children whether their respective interests in tribal assets should be converted to cash or to continue to hold their tribal interests in common but under State law; 77.8 percent, 1,660 members (withdrawing), elected to have their interests converted to cash; and 22.2 percent, 473 members (remaining), elected to hold their interests in common under a management trust. Major portion of tribal assets designated to be sold for the withdrawing members, consisting of forest and marsh lands, were purchased by the Federal Government and set aside as a national forest and a wildlife refuge. Management trust permits remaining members, at 5-year intervals, to vote on dissolving the trust. May 1969, remaining members voted to dissolve trust. Trustee has initiated distribution action.

9. *Effective date of termination.*—August 13, 1961.

10. *Resultant impact.*—Trusts established for minors and those adults determined in need of assistance in managing their affairs. Sampling survey made by the BIA early in 1966 indicated some slight improvement in certain economic and social areas. Termination did not create an exodus from the reservation. Klamaths, in general, either remained on their lands within the reservation area or moved to predominantly non-Indian communities or rural areas in the general vicinity of the reservation. Greater proximity to schools, churches, and social activities was doubtless a factor in the change of residence. As-

similation in terms of participation in non-Indian social organizations, such as PTA, civic groups, and service clubs, is not taking place at any discernible or significant rate. Inference is that Klamaths continue as an ethnic segment in these areas, particularly in the larger communities. Some members already living in some of the coastal and surrounding cities, had moved there for economic and social reasons. But, like others in our society, some were living in the slum or ghetto areas and the payment of their shares did not serve to improve their existing conditions. Some counties particularly those in the vicinity of the former reservation and some of the larger cities, have expressed the view that a goodly number of the withdrawing members have dissipated their funds and are now heavily dependent on welfare assistance.

Indian Tribes or Groups Terminated

1. *Tribe.*—Menominee Indian Tribe.
2. *Membership.*—Total enrollment, per final roll: 3,270.
3. *Reservation.*—Menominee Indian Reservation, Wisconsin.
4. *Land Area.*—Tribal lands: 233,881 acres.
5. *Tribal resources.*—Forest lands, major tribal resources.

6. *Terminal motivation.*—The Menominee Tribe was one of the tribes cited in House Concurent Resolution 108 as one of the tribes to be freed from Federal supervision and control at the earliest possible date. In 1953, the Menominee Tribe had submitted a plan for the use of the $8.5 million claim awarded it by the Court of Claims. The plan provided for a per capita distribution of one-half of the total judgment awarded with the remainder to be placed in the U.S. Treasury. This proposal came at a time when there was considerable sentiment both in the administration and within the Congress for termination. When the plan was presented to the Senate, Senator Watkins, chairman of the Senate Indian Affairs Subcommittee, attached as a condition for the per capita distribution, termination of Federal supervision over the properties and affairs of the tribe.

7. *Terminal legislation.*—Act of June 17, 1954 (68 Stat. 250), with five amendments.

8. *Summary of procedures and disposition of assets.*—A $1,500 per capita was authorized by the act and the tribe authorized to develop plans for the disposition of the tribal assets. Final conclusion reached by the tribe was that the Menominee Reservation should be converted to county status. On September 9, 1958, in a referendum, 89 percent of the adult members who voted favored establishment of the reservation as a separate county and not for attachment to one or the other adjacent counties.

9. *Effective date of termination.*—April 30, 1961.

10. *Resultant impact.*—The termination act did not create an exodus of the members from the reservation. Upon establishment of the reservation as a county, the other tribal assets—timber, and so forth—were incorporated as Menominee Enterprises, Inc. Each Menominee shared in this venture through ownership of one bond which had a face value of $3,000 to pay $120 in interest annually, as well as 100 shares of stock entitling the members to vote for a board of trustees. The corporation, as the main landholder was saddled with about 90 percent of the taxes.

Additional expenditures were necessary to modernize the sawmill. The need for financial assistance for education, health, and sanitation became increasingly more acute. The Congress subsequently passed legislation which authorized a grant of funds to the newly formed county in the amount of $1,098,000. This grant of funds was for contributions to joint school costs totaling $660,000 and authorized expenditure of $438,000 by the Public Health Service for construction of sanitation facilities. Even with this financial assistance, the future is bleak and possibly complete collapse of the Menominee Enterprises, Inc. The adverse results of this termination act does not hold any bright promise for the future of the tribal members.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Ottawa Tribe of Oklahoma.

2. *Membership.*—630. Final roll published August 13, 1959.

3. *Reservation.*—No tribal land. Nine tracts of allotted land; 518.64 total acres.

4. *Terminal motivation.*—Members almost completely integrated in non-Indian community. In general, economy comparable to neighbors.

5. *Terminal legislation.*—Bill drafted after long and protracted negotiations with tribe. Tribe approved draft bill by resolution, February 18, 1956. Termination act—Public Law 84–943, August 3, 1956 (70 Stat. 963).

6. *Summary of procedures and disposition of assets.*—Transfer to each member unrestricted title to funds and other personal property held in trust. Upon request of any owner of undivided interests in allotted lands, Secretary may segregate their undivided interests or by sale. Secretary authorized to contract for educational and training programs prior to termination.

7. *Effective date of termination.*—Terminated effective August 3, 1959. Proclamation deferred until all tribal claims have been finally settled.

8. *Resultant impact.*—On July 14, 1959, tribe filed articles of incorporation and bylaws under Oklahoma laws, as "The Ottawa Indian Tribe of Oklahoma." To perpetuate name and identity of Ottawa Tribe, to maintain Ottawa Indian Cemetery, and to carry on any other tribal business.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Paiute Indians of Utah (Indian Peaks, Kanosh, Koosharem, and Shivwits Bands).

2. *Membership.*—Indian Peaks 26, Kanosh 42, Koosharem 34, and Shivwits 130, total 232.

3. *Reservations.*—Indian Peaks, Kanosh, Koosharem, and Shivwits Reservations, Utah.

4. LAND AREA

	Indian peaks	Kanosh	Koosharem	Shivwits	Total
Tribal	8,960	5,919	440	27,520	42,839
Allotted		1,840	160		2,000

5. *Tribal resources.*—Very limited. Some grazing and one or two mineral exploration leases.

6. *Terminal motivation.*—The isolated situation of these four bands, the lack of Bureau services—although there was every indication for the need of such services, all contributed to the final determination for removal of Federal supervision and services. On the basis of this analysis, Senator Watkins, Chairman of the Senate Subcommittee on Indian Affairs, recommended termination of Federal supervision over the properties and affairs of these four bands.

7. *Terminal legislation.*—Act of September 1, 1954 (68 Stat. 1099).

8. *Summary of procedures and disposition of assets.*—Under provisions of the act, each band made its own decision with respect to the disposition of its common properties. The Indian Peaks Band, an extremely isolated location with no members living thereon, elected to have its lands placed with a trustee for disposition. Indian Peaks lands were subsequently sold and the proceeds thereof distributed to the members. Kanosh divided its tribal properties amongst the heads of the households. Koosharem likewise divided its properties—one farm was purchased by two of the members and the proceeds distributed to members. The Shivwits had 800 acres turned over to them for homesites and the balance of the 27,520 acres placed with a trustee for disposition. The trust for the lands to be sold is still in effect, October 10, 1969, and such trust is renewed annually pending disposition of the lands. Subsurface rights to all lands owned by the Indians of these four bands transferred to the trustee to be held for a period of 10 years.

9. *Effective date of termination.*—March 1, 1957.

10. *Resultant impact.*—Termination did not create an exodus from the reservations. The Indian Peaks Band had, prior to termination, abandoned its reservation and the members were living in the town of Cedar City, Utah. No study made on the resultant effects of termination on these groups, but general indications are that their social and economic conditions have not improved.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Peoria Tribe of Oklahoma.

2. *Membership.*—640. Final roll published April 30, 1959.

3. *Reservation.*—No tribal land. Trust period on allotted land expired in 1915. No tribla assets.

4. *Terminal motivation.*—No trust land. Members almost completely integrated in non-Indian community. In general, economy comparable to neighbors.

5. *Terminal legislation.*—Bill drafted after long and protracted negotiations with tribe. By resolution, tribe approved draft bill February 18, 1956. Termination act—Public Law 84–921 (70 Stat. 937), August 2, 1956.

6. *Summary of procedures and disposition of assets.*—Secretary authorized to contract for educational and training programs. No tribal assets.

7. *Effective date of termination*—Terminated effective August 5, 1959. Proclamation deferred until all tribal claims have been settled. Department still recognizes tribal entity pending settlement of all claims.

8. *Resultant impact.*—None.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—The Ponca Tribe of Native Americans of Nebraska.
2. *Membership.*—Final roll: 442.
3. *Reservation.*—Ponca Reservation of Nebraska.
4. *Land area.*—834.
5. *Tribal resources.*—The resources consisting mostly of land were appraised at $83.580. The land was used for homesites by only a small percentage of the members, more than three-fourths of whom lived away from the reservation.
6. *Terminal motivation.*—The tribe was unable to do business due to lack of interest in tribal affairs by those living on or near the reservation, and those living away were unable to participate. In 1958 the tribal group on or adjacent to the reservation, having elected a spokesman committee, petitioned the Congress for the introduction of enabling terminal reservation. The law as enacted called for tribal consent and a referendum was held on July 12, 1965 and results were in favor of the division plan set forth in the act.
7. *Terminal Legislation.*—Act of September 5, 1962.
8. *Summary of procedures and disposition of assets.*—Each member on the roll was to receive an equal share of the tribal assets. Members were authorized to select for homesite purposes not to exceed 5 acres of land as a proportionate part of his share. Only one site was so selected. The remainder of the lands were sold, and the proceeds distributed. The Secretary was authorized to assist in the disposition of trust allotments, including partitionment, and to issue fee patents on all trust allotments.
9. *Effective date of termination.*—September 4, 1965.
10. *Resultant impact.*—Most of the Poncas affected were not utilizing the tribal property since they did not live on or near the reservation. There was much intermarriage with non-Indians and a corresponding high degree of assimilation. Those who were living on the reservation on their allotments still live there, but we have no recent information on their economic status.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Ute Indians (mixed-blood Indians of the Uintah and Ouray Reservation).
2. *Membership.*—490 members per final roll (.2716186 percent of total enrollment).
3. *Reservation.*—Uintah and Ouray Reservation, Utah.

4. *Land area.*—211,430 acres of tribal lands and 2,468 acres allotted lands.

5. *Tribal resources.*—Primary resource, percentage share of oil and gas leases.

6. *Terminal motivation.*—Combination of factors: (1) Attitude of Congress as embodied in House Concurrent Resolution 108, (2) desire of some of the tribal membership not to use the judgment funds for the development of the reservation, (3) determination on the part of the full bloods to eliminate the mixed bloods for all time in the future from participating in the management of tribal affairs and the distribution of tribal benefits and assets. The full bloods looked upon the mixed bloods as interlopers having little or no Indian blood.

7. *Terminal legislation.*—Act of August 27, 1954 (68 Stat. 868), with one amendment.

8. *Summary of procedures and disposition of assets.*—The division of tribal assets, on percentage basis, between the full bloods and the mixed bloods under the Ute Partition Act was primarily by agreement between the two groups based on carrying capacities and other use records of the BIA. The commercial timberlands were appraised and division thereof agreed upon. Tribal funds were likewise divided on a percentage basis pursuant to the final roll. Controlling interests in the two range corporations established by the mixed bloods have been repurchased by the full bloods. The Ute Distribution Corp. was established by the mixed bloods to handle the mixed bloods' interests and to serve as the depository for all funds payable to the mixed bloods. It is estimated that over 60 percent of the 10 shares issued to each mixed-blood member has been disposed of either to non-Indians or the Ute Tribe (full bloods).

9. *Effective date of termination.*—August 27, 1961.

10. *Resultant impact.*—The University of Utah's Bureau of Indian Services, Extension Division, in its final report of July 1961, stated:

> "The termination of Federal supervision had and still has little effect upon many of the members of the mixed-blood group. Many of the group did not reside upon the reservation and Federal supervision had in effect already been withdrawn. Many of the mixed bloods who lived in the Uintah Basin owned their own land, and here again Federal supervision was not in effect. Thus, for many of the mixed bloods, Federal supervision meant primarily the availability of certain services, participation in Ute tribal affairs, eligibility for per capita payments, and only occasionally genuine supervision over their affairs. Under the terms of the division of the tribe and the termination of Federal supervision, the situation has in reality changed very little."
>
> *Note:* The disposition of the shares in the Ute Distribution Corp., by the shareholders, is one of the issues in the several litigation cases brought by the mixed bloods against the United States and currently pending in the courts.

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Western Oregon Indians (consisting of 60 tribes, bands, groups or communities).

2. *Membership.*—2,081 members (Grand Ronde 546, Siletz 731, southwest Oregon 804).

3. *Reservation.*—Grand Ronde and Siletz Reservations, Oregon.

4. *Land area.*—Grand Ronde—597 acres tribal trust lands. Siletz—2.561 acres tribal trust lands.

5. *Tribal resources.*—Limited forest lands.

6. *Terminal motivation.*—Proposals for the removal of Federal supervision were initiated by several of the competent groups in light of the limited BIA benefits and/or services. Some of the western Oregon groups were clearly of the opinion that their members were able, willing, and ready to assume full responsibilities for their affairs and properties. Although their relationship with the BIA was harmonious, it was their feeling that some of the Federal Government's regulations and procedures were so antiquated that they only served to burden the members. The views of the Congress with respect to termination, prior to the enactment of House Concurrent 108, prompted the BIA to instruct its field staff to initiate discussions with these and other groups located in western Oregon on terminal proposals. The terminal legislation, as enacted, included 60 small tribes, bands or communities. The southwest Oregon groups were primarily all located on public domain allotments.

7. *Terminal legislation.*—Act of August 13, 1954 (68 Stat. 724).

8. *Summary of Brochures and Deposition of Assets.*—Final rolls were prepared for the Grand Ronde and Siletz Tribes. The intertribal affiliations of the other groups precluded preparation of respective rolls. Of the Grand Ronde tribal holdings, 253 acres were sold and the proceeds distributed to the members. The remaining 344 acres were transferred to a trustee for subsequent disposition. All of the 2,561 acres of the Siletz tribal lands were sold and the proceeds distributed to the members. In addition a 37 acre reserve formerly used by the BIA was transferred at the request of the Siletz Indians to the city of Siletz to be used as a park. Another 6-acre tract located at Empire, Oregon was transferred to that community for use as a community center for both Indians and non-Indians. A number of the tribes affected by the termination act have participated in the per capita distribution of judgment funds awarded several of these groups.

9. *Effective date of termination.*—August 13, 1956.

10. *Resultant impart.*—The ancient customs still inherent in many Indian tribes of the United States are not readily apparent among the present members of the tribes residing on the Oregon coast. The native tongue is seldom spoken. The habits of these people are not unlike those of their non-Indian neighbors. The clothes they wear, the pursuits they follow, the desires they express, and their reactions to their

environment all attest a degree of acculturation which provides little, if any, evidence to distinguish or identify the western Oregon Indians apart from the person next door. The termination act has had little, if any, effect upon the members of the western Oregon tribes, bands or communities.

1. Grand Ronde Community
2. Siletz Indians
3. Alsea
4. Applegate Creek
5. Calapooya
6. Chaftan
7. Chempho
8. Chetco
9. Chaelessington
10. Chinook
11. Clackamas
12. Clatskanie
13. Clatsop
14. Clowwewalla
15. Coos
16. Cow Creek
17. Euchees
18. Galic Creek
19. Grave
20. Joshua
21. Karok
22. Kathlamet
23. Kusotony
24. Kwatami or Sixes
25. Lakmiut
26. Long Tom Creek
27. Lower Coquille
28. Lower Umpqua
29. Maddy
30. Mackanotin
31. Mary's River
32. Multnomah
33. Munsel Creek
34. Naltunnetunne
35. Nehalem
36. Nestucca
37. Northern Molalla
38. Port Orford
39. Pudding River
40. Rogue River
41. Salmon River
42. Santiam
43. Scoton
44. Shasta
45. Shasta Costa
46. Siletz
47. Siuslaw
48. Skiloot
49. Southern Molalla
50. Takelma
51. Tallamook
52. Tolowa
53. Tualatin
54. Tututui
55. Upper Coquille
56. Upper Umpqua
57. Willamette Tumwater
58. Yamhill
59. Yaquina
60. Yoncalla

INDIAN TRIBES OR GROUPS TERMINATED

1. *Tribe.*—Wyandotte Tribe of Oklahoma.

2. *Membership.*—1,157.

3. *Reservation.*—Tribal Land: 94.36 acres. Trust allotted 1,956.30.

4. *Terminal motivation.*—Members almost completely integrated in non-Indian community. In general, economy comparable to neighbors.

5. *Terminal legislation.*—Bill drafted after long and protracted negotiations with tribe. Tribe approved draft bill by resolution, February 17, 1956. Termination Act—Public Law 84–893 (70 Stat. 893), August 1, 1956.

6. *Summary of procedures and disposition of assets.*—Secretary authorized to contract for educational and training programs prior to termination. Transfer individual unrestricted title to funds and personal property held in trust. Tribal property, including the burying

grounds at Kansas City, Kans., to be transferred to an approved organization or sold, with a pro rata distribution of the net proceeds.

7. *Effective Date of Termination.*—Terminated effective August 3, 1959. Proclamation deferred pending disposition of Wyandotte Cemetery.

8. *Resultant impact.*—The tribal members were almost completely integrated in non-Indian community, and therefore termination had no great impact on them. Disposition of the cemetery (also known as the Huron Cemetery in Kansas City, Kans.) has been a major problem. Repeated attempts were made to find a trustee who was willing and able to accept the responsibility for disposal, but no trustee was found. Legislation was introduced in the 90th Congress to establish the cemetery as a national monument, but it was not enacted. In the meantime, the cemetery has been maintained by the city park department.

Legislative proposals prepared in response to House Concurrent Resolution 108, but legislation not enacted

1. *Lower Elwha Community, Washington.*—Departmental proposal transmitted March 4, 1960, introduced as S. 3232 and H.R. 11104 in 86th Congress. House committee favorably reported H.R. 11104, but no further action taken.

2. *Confederated Salish and Kootenai Tribes of Flathead Reservation.*—Departmental proposal transmitted January 4, 1954, introduced as S. 2750 and H.R. 7319, 83d Congress. No action taken by either committee.

3. *Indians and Indian communities in southern part of Minnesota.*—Departmental proposal transmitted to Congress January 18, 1955, 84th Congress. Four House and one Senate bill introduced. No action. Proposal resubmitted to Bureau of the Budget July 16, 1958, but was not cleared in time for submission to the 85th Congress.

4. *Certain tribes, bands, and colonies in the State of Nevada.*—H.R. 7552 introduced in 83d Congress. Bureau comments submitted to Department May 15, 1954. No departmental report prepared. Introduced in 84th Congress as H.R. 3239. Department's report submitted to committee July 17, 1956. No action.

5. *Sac and Fox of Kansas and Nebraska, Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe located in the State of Kansas, and the Prairie Band of Potawatomi Indians located in the State of Kansas and the individual members thereof.*—Departmental proposal transmitted January 4, 1954 to 83d Congress. Introduced as S. 2743 and H.R. 7318. No action taken.

6. *Shoalwater Bay Reservation, Wash.*—Departmental proposal submitted to 86th Congress on March 4, 1960. Introduced as S. 3231 and H.R. 11098. Hearings held April 4, 1960 on H.R. 11098. No further congressional activity.

7. *Seminole Tribe of Florida.*—Departmental proposal transmitted to 83d Congress. Introduced as S. 2748 and H.R. 7316. No action.

8. *Turtle Mountain Band of Chippewa Indians.*—Departmental proposal submitted to the 83d Congress. Introduced as S. 2748 and H.R. 7316. No action.

9. *Makah Tribe, Washington.*—Introduced in the 83d Congress as H.R. 7981. The bill was drawn up by the Makahs as a counterproposal to the Department's proposal. Hearings held on February 24, 1954. No further congressional activity.

STATUS OF OTHER TERMINATION LEGISLATIVE PROPOSALS CONSIDERED BY RECENT CONGRESSES

On November 14, 1967 a Senate Subcommittee on Legislative Oversight requested the Bureau to prepare, in response to requests made when Congress acted on judgment fund bills in 1964, 1966, and 1967, draft legislative proposals to provide for ending supervision over specified groups. The Bureau drafted such proposals for the:

1. Pawnee Indian Tribe of Oklahoma.
2. Kalispel Indian Community of the Kalispel Reservation, Wash.
3. Eastern Shawnee Tribe of Oklahoma.
4. Iowa Tribe of Kansas and Nebraska.
5. Iowa Tribe of Oklahoma.
6. Flandreau Santee Sioux Tribe. This legislation was developed at the request of the Congress when it enacted legislation to give this group 80 acres of land.

These proposals were all submitted by the Commissioner to the chairman of the Senate Committee on Interior and Insular Affairs in February and March of 1968. None of these proposals was introduced in the 90th Congress.

In October of 1967 a like proposal was submitted for the Miami Tribe of Oklahoma, in response to the committee's request when it enacted a judgment fund bill. This proposal was introduced as S. 2647 in the 90th Congress, but no final congressional action was taken.

The act of July 24, 1956, section 5 (70 Stat. 626) provides that the Business Council of the Confederated Tribes of the Colville Reservation shall, in accordance with their Resolution No. 1955–33, dated April 8, 1955, submit to the Secretary within 5 years proposed legislation providing for termination. Bills to accomplish this end were first introduced in the 87th Congress in 1961 and each subsequent Congress through the 90th. None of these bills was enacted. Pending in the 91st Congress are S. 541 and H.R. 6620 "to provide for the termination of Federal supervision over the property of the Confederated Tribes of the Colville Indian Reservation located in the State of Washington and the individual members thereof and for other purposes."

The act of August 31, 1964, section 18 (78 Stat. 738) provides that the Secretary shall submit within 3 years a plan for complete withdrawal over the property and affairs of the Seneca Nation. Such a plan was submitted in August of 1967; introduced as S. 2390 in the 90th Congress, but was not enacted into law.

There is pending in the 91st Congress H.R. 13462 "to amend the act of August 25, 1959 with respect to the final disposition of the affairs of the Choctaw Tribe" (Oklahoma). The 1959 act has already been amended three times to extend the period for carrying out its provisions from 3 years to 11 years or until August 25, 1970. H.R. 13462 would make some substantive changes in the 1959 act, as amended.

THE FIVE CIVILIZED TRIBES ACT OF 1906

The act of April 26, 1906 (34 Stat. 137) is entitled: "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes." However, section 28, in pertinent part states: "That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law. * * *." Accordingly, the 1906 act has never been listed as a "termination" act. Congress subsequently legislated, by the act of June 26, 1936 (49 Stat. 1967)—The Oklahoma Indian Welfare Act—that: "Section 3. Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe."

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B. A Study of the Termination Policy

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Foreword

The focus of this study is a public policy question of decisive importance to the people of several American Indian tribes. The study attempts to understand and to explain the origin, the articulation, and the implementation of the policy of terminating Federal services and protections for Indians. The story is intrinsically important. The policy gains wider significance, however, as a classical example of an attempt to apply certain principles fundamental to conservatism to social reality. The analysis begins and ends with a consideration of the effects of ideological assumptions upon the process of policy formation.

The method of this study arose not from systematic theory, but from the need to make sense of a policy deeply immeshed in a complex relationship between four governmental structures. There could be no absolute point of beginning for this analysis. Any perspective chosen is relative to each of the other perspectives. Perhaps, then, the action can be best understood when viewed simultaneously from within several different perspectives. In a sense, the physical concept of relativity provides a metaphor for political explanation. The approach is similar to that brought to literature by Lawrence Durrell in the "Alexandria Quartet". In a preface to "Balthazar", he offers an explanation:

> Modern literature offers us no unities, so I have turned to science and am trying to complete a four-decker novel whose form is based on the relativity proposition.
>
> Three sides of space and one of time constitute the soup mix of a continuum. The four novels follow this pattern.
>
> The first three parts are to be developed spatially and are not linked in serial form. They interlap, interweave, in a purely spatial relation. Time is stayed. The fourth part will represent time and be a true sequel.

The first chapter of this study is cross sectional in character, showing the forces and detailing the arguments bearing upon the policy at one point in time—as the policy was under consideration by Congress. From this initial point of reference, the following four chapters go on to consider the development of the policy from within four separate perspectives—within Congress, with the Bureau of Indian Affairs, within the tribe, and within the Wisconsin government. Many of the major events will be the same, but the perspectives, are crucially different. The final chapter is a sequel, attempting to reintegrate the separate, "interlapping" strands and to evaluate the results of the policy in terms of the assumptions and the objectives of the policy-makers.

CHAPTER 1.—THE SENATOR AND THE INDIANS

> "In view of the historic policy of Congress favoring freedom for the Indians, we may well expect future Congresses to continue to endorse the principle that 'as rapidly as possible' we should end the status of Indians as wards of the Government and grant them all the rights and prerogatives pertaining to American citizenship.
>
> "With the aim of 'equality before the law' in mind our course should rightly be no other. Firm and constant consideration for those of Indian ancestry should lead us all to work diligently and carefully for the full realization of their national citizenship with all other Americans. Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in letters of fire above the heads of the Indians—'These people shall be free!' "
>
> —**Senator Arthur V. Watkins**

There is something un-American about the idea of reservations. In many parts of the country people feel a vague guilt about the "Indian problem" of their region. It is disturbing that a society which has achieved such a high degree of success in assimilating many minority groups has so often failed with the Indian peoples. Perhaps, some argue, the Government has been too protective, keeping the Indians apart from the rest of the country in reservations. Possibly it would be better if they were to enter the life of the cities, following the path of other ethnic groups. Perhaps Government paternalism should be ended, and the people should be given the same opportunity for successful assimilation which was offered to our ancestors.

The new Republican President took office in 1953 and carried with him majorities in both Houses of Congress. Seriously concerned with the danger of big government, Eisenhower warned, "Those who would stay free must stand eternal watch against excessive concentration of power in government." [1] This sentiment was strongly echoed in Congress. The first year of the new administration saw the beginning of an extensive congressional effort to reduce the involvement of the Federal Government in Indian affairs, and thus to "free" the Indian people.

Congress did not long delay action. On June 9, 1953, Representative Harrison introduced House Concurrent Resolution 108. The resolution was seemingly innocuous, but actually a highly important statement expressing the "sense of Congress" in support of ending Federal supervision of Indian people "as rapidly as possible." [2]

RESOLUTION 108

"Whereas it is the policy of Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship; and

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[1] Morton Grodzins, "Centralization and Decentralization in the American Federal System," A Nation of States, ed. Robert A. Goldwin (Chicago: Rand McNally, 1961), p. 5.

[2] Arthur V. Watkins, "Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Person," Annals of the American Academy of Political and Social Science, CCCXI (May 1957), p. 50.

"Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore be it

"*Resolved by the House of Representatives (the Senate concurring)*, That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution."[3]

The resolution was not controversial. It was considered by the Indian Affairs Subcommittee and the Interior Committee and favorably reported on July 15.[4] The resolution was placed on the unanimous-consent calendar and reached the House floor on July 27. The measure aroused very little discussion. The committee accepted the one amendment offered, and there was no further debate. No one spoke in opposition to the resolution, and it was passed amid a long series of private bills.[5] The resolution reached the Senate on July 28, and a total of 4 days was required for referral, committee action, and the submission of a committee report.[6] Obviously the ground was well prepared. The Senate endorsed the resolution the day it was submitted, without a word spoken either in support or in opposition.[7]

Thus, the sense of Congress was declared and one of the most important declarations of Indian policy in American history was adopted. Few Members of Congress had shown any interest; most were unaware of the measure. Indian policy is often a matter too unimportant for a genuinely democratic decision in the U.S. Congress. Now, the Interior Department was directed to draft legislation implementing the policy set forth in the resolution. Hearings were to be held early the next session. These hearings were to clearly demonstrate the ability of one concerned Senator to dominate the formation of the policy of the Government toward several Indian tribes.

It is necessary, before considering the hearings, to understand the nature and composition of the committees holding jurisdiction over Indian affairs legislation. In the Senate, assignment to the Interior

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[3] *Ibid.*

[4] U.S. Congress, House, Journal of the House of Representatives, 83d Cong., first and second sess., p. 575.

[5] U.S. Congressional Record, 83d Cong., first sess., 1953 XCIV, p. 9968.

[6] U.S. Congress, Senate, Journal of the Senate, 83d Cong., first and second sess., pp. 513, 539, 574.

[7] U.S. Congressional Record, 83d Cong., first sess., 1953, XCIX, p. 10815.

Committee is not highly valued. In terms of the preferences of Senators, the committee ranks ninth among the 15 standing committees.[8] Because Members frequently give up seats on this committee for another assignment, it "tends to be staffed almost entirely by Senate newcomers. Turnover is high, skill is lacking, and morale among those Members covetously eyeing other committee posts is frequently low." [9] Such committees, Matthews found, are "often woefully weak in parliamentary skill, prestige, and experience." [10] Characterized by "geographically limited clientele and overwhelmingly western membership," the Interior Committee shows a very high degree of policy agreement among its members.[11]

As the Eisenhower administration began, the Senate Interior Committee was composed of eight Republicans and seven Democrats, and 12 of the 15 members were from Western States. The average seniority of committee members was less than 5 years, and all Members with any seniority also held seats on more important committees. The membership of the committee included the chairman of the Finance Committee, three members of the Republican policy committee, and the minority whip.[12] Obviously, the committee was a secondary interest for many of its members. Holding their seats for the purposes of safeguarding important interests in their home States, they often had little interest in the other work of the committee.

Lack of interest and experience among the members were compounded by the wide and heterogeneous range of the committee's concerns. The Interior and Insular Affairs Committee was created in 1966 by combining five separate committees—Public Lands, Mines, Territories and Insular Affairs, Irrigation and Reclamation, and Indian Affairs.[13] With relatively low partisan division and a great deal of technical work to be done, the committee situation was ideal for maximizing the influence of the legislative technicians, the subject matter specialist, and the chairman of the permanent subcommittee. Indeed, one man who combined these three roles was to profoundly influence the formation of policy in Indian Affairs.[14]

The composition of the House committee closely parallels that of the Senate. In the House, the Interior Committee is one of seven low-status "nonexclusive" committees. During the period from the 80th to the 86th Congress, this was one of the five committees receiving the most freshmen Members.[15] Masters found that assignments to this committee "are usually based on ecological makeup of the Members' districts, so as to allow them to protect their incumbency." [16]

The House Interior Committee of 1953 was made up of 15 Republicans and 11 Democrats. The Members averaged 3 years experience in the House, but nine were newly elected. At this time, the committee was less specialized than its Senate counterpart, with only 60 percent of its members from Western States. Although House Members generally held only one committee assignment, two-thirds of the Republican members of the committee were also assigned to another committee.[17]

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[8] Donald R. Matthews, "U.S. Senators and Their World," (New York: Vintage Books, 1960) p. 149.

[9] Ibid., p. 151.

[10] Ibid.

[11] Ibid., pp. 168–169.

[12] U.S. Congress, Congressional Directory, 83d Cong. first sess. (data compiled from many sections of book).

[13] George B. Galloway, "The Legislative Process in Congress" (New York: Thomas Y. Crowell Co., 1953) p. 278.

[14] Nicholas Masters, "Committee Assignments". New Perspectives on the House of Representatives, edited by Robert L. Peabody and Nelson W. Polsby (Chicago: Rand McNally, 1963).

[15] Ibid., pp. 33–58.

[16] Ibid., p. 50.

The Interior Committees were formally responsible for Indian affairs legislation, but much of the actual responsibility was concentrated in the Indian Affairs Subcommittees. Presiding over a clearly defined and highly complex area of policy, these subcommittees were of decisive importance. "Given an active subcommittee chairman working in a specialized field with a staff of his own," one man has observed, "the parent committee can do no more than change the grammar of a subcommittee report." [18] In 1953, the chairmen of both subcommittees were able, were actively concerned, and had definite commitments regarding the future development of Indian policy. Each worked harder than any member of his subcommittee. Both were in broad agreement and appeared to work closely together.

Senate subcommittee membership is of far less significance than a similar position in the House. While a "Representative is likely to have two subcommittee assignments at the most * * * a Senator is likely to have at least six." [19] The many conflicting responsibilities of the Senate Members tend to substantially increase the power of the subcommittee chairman. The position of the Senate leader is further strengthened by the fact that he is assigned a permanent staff member of his own choice.[20] The nature and direction of the subcommittee's activity are inevitably strongly shaped by the personality, the skill, and the ideological commitments of its chairman.

Arthur V. Watkins of Utah, chairman of the subcommittee, was beginning his second term in the Senate. Sixty-six years old, Mr. Watkins had spent virtually his entire life in Utah. A lawyer and farmer, he had previously served in two local offices. In 1934, he had organized a local reclamation project, and this provided his most relevant experience for the concerns of the Interior Committee. Senator Watkins was a deeply religious man and he had held high office in the Mormon church. Elected to the Senate in the Republican upsurge of 1946, Watkins clearly established himself as a member of the Old Guard conservative bloc.[21] Watkins also served as chairman of the Joint Committee on Immigration, and as a member of the Judiciary Committee.[22]

The House subcommittee was chaired by E. Y. Berry, a South Dakota Republican with only 2 years experience in Congress. Berry had spent his entire life in South Dakota, where he had been employed as a lawyer, a newspaper editor, and a publisher. Prior to his election he had served in the State senate and on the board of regents. He represented an important Indian State with very serious problems. Berry also served on the Education and Labor Committee, an appointment indicating a strongly probusiness orientation.[23]

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[17] U.S. Congress, Congressional Directory, 83d Cong. first sess.

[18] George Goodwin, Jr., "Subcommittees: The Miniature Legislatures of Congress," APSR, LVI (September 1962), p. 596.

[19] Ibid., p. 597.

[20] Ibid., p. 602.

[21] David B. Truman, "The Congressional Party," (New York: John Wiley, 1959) pp. 78, 75, 83–84.

[22] Congressional Directory, 83d Cong., first sess.

The Senate subcommittee consisted of five members. In addition to Watkins, the Republican members were Senator Dworshak of Idaho, and Senator Kuchel of California. Dworshak also served on the Appropriations Committee, the Republican Policy Committee, and the Government Operations Committee; Kuchel was a new Senator with the responsibilities of representing a major State. Of the three, only Watkins showed a strong interest in the formation of Indian policy.

The Democratic appointees were Senator Anderson of New Mexico and Senator Smathers of Florida. Both men held seats on more important committees, Anderson on Atomic Energy and Agriculture and Smathers on Commerce and the Select Committee on Small Business. Only where an important interest of the Indians of their States were concerned did they appear willing to devote time to the work of the subcommittee.

The House subcommittee was comprised of 14 members. Six of the nine Republican members came from important Indian States, but only one of the Democrats came from a State with important reservations. Half the Republicans and none of the Democrats had multiple assignments. The average subcommittee member had 3 years service in the House.[24]

The legislation of 1954 was considered in a lengthy series of joint hearings held by the two subcommittees. This was a very unusual procedure, and a recent study has found only four such hearings in recent years.[25] The decision to hold joint hearings is best understandable in terms of the basic agreement between the two chairmen. Both desired to quickly pass the necessary legislation and clearly established a new policy while the Republicans maintained control of Congress and the administration.

Hearings began February 15, 1954, and were concluded in mid-April. Eleven of the hearings were held in Washington and two in reservation areas. Twenty days were devoted to taking testimony, and the record ran to 1,716 pages. Only Senator Watkins, of the five Senate members, was present for more than one hearing. Senator Anderson failed to attend any of the sessions. Of the House members, Representative Berry was almost always present, and five members participated in at least four hearings. The typical hearing was attended by Watkins, Berry, two members from the House, and the Senator's professional staff member. Watkins had little difficulty in dominating the hearings.

The first piece of legislation to be considered dealt with the future of some 358 Indians living in scattered bands in Utah. The bill was clearly designed to implement the House resolution and to establish a pattern for future policy. The bill provided that the reservation status of the Indians be terminated, that the responsibilities of the Bureau of Indian Affairs toward the Indian people be concluded, and that the tribal members be allowed to determine the disposal of their property by referendum. If they acted within the deadline of 3 years, they could either decide to sell the property, to form a State corporation, or to establish a management trust. Should they fail to take action, the Secretary of the Interior would be empowered to appoint a trustee charged with liquidating the lands held in trust. Whatever their choice, at the conclusion of the allowed time the Indians would become subject to all State laws and taxes, and would retain no specific rights or limitations as Indians. Federal statutes affecting Indians would no longer apply to them. Through the legislation, the Indians would gain the right to sell or manage the property held in trust, and they would become subject to State jurisdiction in every respect.

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[23] Ibid.
[24] Ibid.
[25] Goodwin p. 600.

The Utah bands had not been cited for termination in House Concurrence Resolution 108, but a bill was drafted at the request of Senator Watkins. Following the passage of the House resolution, the Indian Bureau had begun a hectic process of drafting the required legislation. Local Bureau officials were called to Washington to assist in preparing draft legislation. They were then directed to consult with the Indian groups involved. "An effort was made to call as many meetings as necessary," testified Bureau Commissioner Emmons. "Naturally, the time for completion was short. But formal statements of Indian views were obtained where possible." [26]

The time for consultation was indeed short. There had been no opportunity to examine the legislation for possible conflict with treaty rights, or to clear it with the Bureau of the Budget.[27] Consultation with the Indians was hurried; it often consisted of confronting a tribal meeting with a highly complex piece of legislation, and requesting a decision after an explanation was made. In Utah, for example, the draft legislation was mailed to the tribal representatives about 40 days before the hearings, and the bands were notified of the hearing itself less than 20 days before it took place in Washington. The bands were notified that they could use tribal funds to send a delegate to Washington, but none of the groups had funds for this purpose or for employing a lawyer to review the legislation.[28]

Senator Watkins began the hearings with the Utah legislation, wishing to demonstrate his conviction by first dealing with his home State. In order to make a strong case at the hearing, he held a meeting in Utah with several Indian representatives 5 days before the hearing. He was able to gain their assent by agreeing to a series of provisions ranging from removal of crop restrictions for several years to the recognition of marriages performed under tribal law.[29] These provisions were not incorporated in the bill. One year later, a Utah official was to comment, "We've always thought they were sort of political pawns in the game, because they did not know anything about it." [30]

The Utah hearing, in its broad outline, established the pattern which the other hearings were to follow. The sessions began with the distribution of the bills and background material from the Interior Department. If Congressmen representing the State were present, they were given the opportunity to speak first. The presentation of the Bureau of Indian Affairs was next and generally included testimony from both Washington and local officials. Indian representatives and tribal attorneys were then permitted to testify. Local government officials, local citizens, and spokesmen for national Indian affairs organizations also presented testimony to the subcommittees.

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[26] U.S. Congress, Joint Subcommittees on Indian Affairs, joint hearings, "Termination of Federal Supervision Over Certain Tribes of Indians," 83d Cong., second sess., 1954 p. 42.

[27] Ibid., p. 31.

[28] Ibid., pp. 55–56.

[29] Ibid., p. 51.

[30] Minutes of the meeting at Santa Fe, N. Mex., October 1955, Governors' Interstate Indian Council (in the files of the Wisconsin Legislative Reference Library), p. 38.

Bureau of Indian Affairs.—The Bureau's presentation was generally introduced by the Associate Commissioner of the BIA, who summarized the provisions of the legislation and stated the broad position of the Bureau. The director of the regional area office and the reservation superintendent were often present to provide local background and answer specific questions. Throughout the hearings, the attitudes of the BIA officials were in close sympathy with those of the subcommittee chairman and the members of the joint subcommittee.

Although Bureau officials hesitated about certain specific applications of the termination policy, there was firm commitment to the basic policy. One reservation superintendent, for example, argued that the original purpose of the formation of reservations was "providing a place that afforded an opportunity for them to become adjusted to the accepted pattern of civilization." [31] "I am convinced," he said, "that in the present picture that we have today, some legislation, and some very radical changes, are going to be necessary to create a more equitable handling of tribal assets. We are no longer so greatly concerned with their social progress. I think they have achieved that." [32]

The comments of the Associate Commissioner showed a similar attitude. Discussing the disposal of the $70 million Klamath forest, he demonstrated his willingness to accept the logic of his position. "I think it is difficult at this stage," he said, "to make any kind of guess as to whether they will move toward liquidation or whether they will want to put the property in a management trust or corporation. * * * I do feel that the people themselves should have the final choice as to what they do with this property. It is their property, and we consider them to be competent. And on that basis, I don't think it would be proper for the Bureau to say, 'We think you ought to do this with the property and nothing else.' " [33]

The Oregon area director enthusiastically endorsed the new policy, arguing that "99 percent of the Indians are very anxious, and, in fact, some of them are a little adament that they have not yet received legislation before so that they can clear up their government business and be on their own. They are anxious to be considered as any other citizen. They do not like what they consider as sort of a stigma of being wards of the Government, as they put it." [34]

It was necessary, however, for the Associate Commissioner to qualify the remarks concerning the Oregon Indians by explaining that their assent had been obtained by Bureau refusal to recommend passage of a bill providing for the distribution of $2.6 million won by the tribe in an Indian Claims Commission proceeding. "I think they are a little unhappy at the present time," he said, "because of the slowness in getting their judgment funds distributed. Mr. Chairman, you will recall that you had a hearing on that bill last week; and I think, if that particular problem is wound up with fair dispatch, they will feel a little better about this legislation."[35] A similar means of persuasion was used with other tribes.

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[31] Joint hearings, p. 832.
[32] Ibid., p. 833.
[33] Ibid., p. 244.
[34] Ibid., p. 181.

The Indian Bureau was obviously sympathetic to the termination legislation, and was sometimes willing to stretch a point in its presentation. Bureau officials made a strong effort to gain some form of tribal approval, and attempted to provide factual justification in the case of each tribe cited in the congressional resolution. An excerpt from the Bureau analysis of the Potawatomi Tribe of Kansas provides a good indication of the BIA viewpoint:

> "This tribe is the least progressive of the four tribes in Kansas. Tribal councilors and members have strongly opposed the removal of any Federal supervision and decline to assert any initiative of their own in these matters. Out of a membership of 1,325, there are 900 who are receiving service of some kind. While all speak English, there are 125 who cannot read or write.
>
> "Their economic level is low but seems to be all that they desire. Because of the ownership status of their lands their progress is retarded, as it tends to tie them to the locality and yet does not furnish them adequate income.
>
> "They * * * have failed to acquire the necessary ambition, providence, and sense of responsibility to rise above their economic level."[36]

Even in the extreme case of the Florida Seminoles, with two-thirds of the people unable to speak English and 80 percent illiterate, the Bureau attempted to justify ending Federal supervision. There was no inclination to challenge the wisdom of Congress.

Local Members of Congress.—Senators or Representatives who were not members of the subcommittees appeared to testify during consideration of seven of the 12 termination bills. Most welcomed the legislation or presented only minor objections. A few, however, gave effective testimony against the bills designed for tribes in their districts. A Congressman from Texas and Senators from Florida, North Dakota, and Montana, made up the major congressional opposition to the legislation.

Representative Dowdy of Texas was outraged by BIA activities in connection with the bill, accusing the Bureau of misrepresentation and unfairly threatening the Indians to gain their assent. The Bureau report claimed that the tribe had agreed to the bill, but actually both the tribe and the Texas Legislature had requested quite a different arrangement. "Then the Department * * * introduced legislation * * * that would go far beyond that * * * to remove these Indians from the protection and responsibilities conferred on them as Indians by the U.S. statutes and abrogates their corporate charter."[37]

Using the records of the tribal council meeting which had considered the legislation, Representative Dowdy demonstrated that the BIA official had told the Indians that the bill was merely concerned with forest management. To gain their assent, he had threatened that "There will be no timber sold until you agree to it." [38]

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[35] Ibid., p. 187.
[36] Ibid., pp. 1326–1327.
[37] Ibid., p. 100.

Senator Mansfield took another approach in his testimony on the Montana Flathead bill. "When we entered into a treaty with a sovereign nation," he said, "we entered into a treaty with an equal. And I have never gone on the theory that the Indian is a second-class citizen of this country. As a matter of fact, I think we have treated the Indian pretty badly down through the years." [39] He told the subcommittee of the terrible conditions of the Indians in Montana who had lost their tribal lands.

Senator Smathers, on the other hand, argued that assistance to the Indian people was analogous to foreign assistance, and that its purpose wasn't to weaken the people but "to make them independent and strong." [40] Speaking of the Florida Seminoles, he asked, "Would you not agree that with three-fourths of the Indians being unable to speak English, the possibility of exploitation might be great unless this Federal Government set up some sort of corporation whereby the title was guaranteed to the Indian."? [41]

The termination of the Turtle Mountain Reservation was vigorously opposed by Senator Young of North Dakota. While "not out of sympathy with the purpose" of the legislation, he proceeded to develop a strong case against the specific provisions. The people were extremely poor and termination "would pose a severe financial hardship to Rolette County and the State of North Dakota. Rolette County is absolutely financially unable to assume added obligation which would result." [42]

"Bad as the situation is," he said, "and I think the Federal Government is responsible for it, they ought to carry on until the Indians are placed in a situation and circumstances where they would have some chance to make a living for themselves. Certainly the State of North Dakota is not responsible for the present sad plight of these Indians." [43]

The Indian witnesses.—Deeply concerned with the proposed legislation, tribal delegates played an important role in most of the hearings. Members of the tribe under consideration participated in nine of the 13 hearings, some coming as tribal delegates and some on their own initiative. Tribes with large resources were able to pay the way of delegates and to send large groups. Three of the poorest tribes were unable to send a single member. "After an Indian tribe is far enough in poverty," said Senator Young, "you automatically do not hear from them any more, because they cannot come to Washington to testify." [44]

The tribes under consideration ranged from wealthy and relatively advanced groups to those who lived under primitive conditions and in great poverty. The size of the groups covered by the bills varied from 500 to 31,000 persons. One group owned only 4,000 acres, while another had holdings exceeding a million acres; some tribes held worthless desert land, other rich timberland, and one group owned land in Palm Springs. In spite of the enormous differences among the groups, however, it is possible to identify certain themes running throughout their testimony.

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[38] Ibid., p. 105.
[39] Ibid., pp. 891–892.
[40] Ibid., p. 1056.
[41] Ibid., p. 1057.
[42] Ibid., p. 1445.
[43] Ibid., p. 1446.
[44] Ibid., p. 1467.

Although the great majority of Indian spokesmen were opposed to the legislation, five of the hearings saw a division of opinion among the Indian witnesses. None of the tribes took a position clearly supporting the legislation, but there were substantial groups within several of the tribes which favored termination. Indian supporters and opponents of the legislation each developed several lines of argument. Those supporting the policy relied heavily upon the following arguments:

(1) That they desired to liquidate the reservation and to receive their personal share of the tribal property.

(2) That they wished freedom from Government control and regulation.

(3) That they wanted their property removed from trust status to allow them to mortgage or sell.

(4) That tribal or community ownership was socialistic or communistic.

The desire to liquidate the reservation was most frequently expressed by those from wealthy tribes. Often they were fed up with tribal factions and desired to have their share and be done with the issue. On a few reservations a large number of members had permanently moved away and thus desired to dispose of tribal holdings. "The only way to get this thing broken down, to knock this fight off," one Indian testified, "is to give each individual that wants it their final settlement and not drag it out over 3 or 4 years or 10 years. . . . That is the only answer; a final settlement, immediate liquidation." [45] This sentiment was expressed by members of the wealthy Klamath Tribe, and by some of the Palm Springs Indians. "We are very weary of having our tribal assets dissapated," said one member of the Flathead group. "Our position would be to have Congress enact legislation directing the Secretary of the Interior to liquidate all tribal assets and give each individual Indian his or her share immediately." [46]

A few Indians echoed the position of the BIA. "I am so grateful to Secretary McKay," said one, "for setting a new policy to give the Indians their freedom, to give them the right to handle their own business and their own affairs, tribally and individually. I am grateful to this Congress for the policy set out in Resolution 108, and I hope that this Congress will carry out that resolution.[47] I would say that 95 or 98 percent are capable of taking care of themselves individually." [48]

A California Indian let fly against Bureau supervision. "By golly! I get so doggoned mad when I think about the Bureau. They are just a curse to the Indians and my people feel that way because the Bureau in California is the cause of our troubles." [49] "Now," said another witness, "the Indian Bureau and these Indian councils are in big business, cold as ice. There is no sob-sister attitude as to how the things are handled and managed at Klamath. It is purely big business, and it is political."[50]

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[45] Ibid., p. 74A.
[46] Ibid., p. 1012.
[47] Ibid., p. 290.
[48] Ibid., p. 294.
[49] Ibid., p. 570.

A handful argued for termination on the grounds that it would end "socialism" or "communism" on the reservations. "The Congress should absolutely break up these reservations," said one. "They are nothing but a Socialist, communistic form of government for people to live under."[51] "During my experience here on the reservation," said another, "I have found out we are living under a communistic form of government. . . . There are Communist groups even in the churches."[52] An Indian from southern California saw a deep Communist conspiracy. "Carefully laid plans were perfected to capture the Office of Commissioner of Indian Affairs and thus have a free hand in their scheme to plant the seed of communism in America."[53]

The bulk of Indian testimony, however, was overwhelmingly in opposition to the legislation. The arguments presented can be classified into the following broad categories: (1) Financial concerns, (2) loss of rights and privileges established by treaties or by Federal law, (3) concern for the state of tribal preparedness, (4) procedural issues, and (5) emotional ties to their lands.

The financial implications of termination were frequently discussed during the hearings. A primary concern of Indian spokesmen was that the imposition of taxes would result in the loss of Indian lands. Many of the delegates were also worried about the settlement of debts and obligations owed by the tribes to the Government. Neither the BIA nor the tribes had had time to carefully study the economic burdens which would be placed upon the tribes, but the tribal leaders were deeply concerned.

The question of taxation preoccupied many of the delegates. "Indians on the reservation," said one, "know little or nothing about land taxes, water rights, surveys, or the meaning of deeds, patents, tax liens, foreclosures, and so forth. . . . Studies should have been been made on the subject of taxation in connection with large semi-waste grazing lands on a number of reservations. It is doubtful if our Indian people will be able to pay the taxes on these lands . . . the same is true for logged-off timberlands. Inability to pay State taxes will lead to inevitable loss of land by a number of Indian tribes."[54] A member of the Flathead made this analysis of the probable effects of taxation:

> If you are taxed 25 or 50 percent of this estimated income in the future on forestry, supposing we get $200,000 a year. We are taxed $100,000. . . . And then we have to turn around, in turn, and pay a State income tax, which is 3 percent of the net. And then we have to pay property tax in the State of Montana on this forest reserve, 353,000 acres. And then we have got to maintain this forest and watershed. And it has cost the Government around $50,000 a year. It will cost us more when we first start out. That is not including fire. One good fire would break us. We would

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[50] Ibid., p. 291.
[51] Ibid., p. 298.
[52] Ibid., p. 76A.
[53] Ibid., p. 552.
[54] Ibid., pp. 412–413.

> have to go out and borrow money somewhere to fight these fires.[55]

Indians on this same reservation had been given ownership of 1,575 pieces of land under previous legislation. Only 15 pieces remained in Indian hands.[56]

The tax threat for the Seminoles was even more serious. Tribal members were beginning to built cattle herds, but the financial burden of taxation would force them to default on their payments and thus forfeit their stock to the Government loan program.[57] With almost no tribal income, they would be forced to pay $15,000 a year in property taxes. Thus, potentially valuable land would be lost to oil speculators.[58] The delegate of the Potawatomi Tribe spoke of a similar problem and stated that, "The net income from our land is below the figure of the tax value." [59]

Tax obligations were far the most important financial concern of the Indians. Several tribal delegates, in fact, agreed that the tax provisions was the only portion of the legislation wholly unacceptable to their groups. Some of the poorer tribes, however, were also seriously concerned with the forgiveness of tribal obligations to the Government. Under the practice of the BIA it was possible for the Bureau to construct elaborate irrigation projects, to begin livestock experiments, and to initiate other programs without obtaining the permission of the tribal government. These projects were then charged to the tribe, whether they succeeded or badly failed. In Utah, such debts amounted to approximately $800 for each Indian family.[60]

Financial problems were the most significant practical issues discussed in the hearings, but these issues were often related to the broader topic of the treaty and statutory rights of the tribe. Opponents of the legislation would often invoke the inviolability of the rights established by treaty.

"I have recited to you," said a lawyer for the Flathead group, "the simple facts of a simple contract made 100 years ago with a group of unlettered Indians who did understand what the treaty said * * *

> "Now, if in your opinion it is the just and right thing for the United States to say to those people, 'We are through with Government supervision of this, we are going to give you a patent to it; Good blass you, do the best you can with it, they do not want you to do that and I do not want any doubt to be in the mind of this committee about their position:'" [61]

"We want to remain according to what our treaty reads," said an Indian woman from Kansas. "That has been violated time and again, but we still remain there and we want to remain according to this treaty that we have." [62]

Many Indians were also concerned about the loss of specific rights guaranteed them, as Indians, by Federal law. The tribes of Texas, for example, were concerned with the threatened loss of health care and the opportunity for attending specialized Indian schools. Health care was also a serious worry for the Montana Indians. Constituting less than 3 percent of the State's population, the tribe had over a tenth of the State's infant deaths and almost a third of the tuberculosis deaths.[63]

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[55] Ibid., p. 945.
[56] Ibid., p. 948.
[57] Ibid., p. 1106.
[58] Ibid., p. 1109.
[59] Ibid., p. 1369.
[60] Ibid., p. 60.
[61] Ibid., p. 933.
[62] Ibid., p. 1329.

The impact of the bill on Seminole education would be disastrous. Reservation schools would be closed in an area where some of the children were as far as 50 miles[64] from another school. Children at the public schools would no longer receive free lunches. "Our people," said one Seminole mother, "want 25 more years of extension of time because they know they can take care of themselves during that time after 25 years. * * * I believe that all the women on the reservation think they will have their children educated by that time to take care of their own affairs."[65]

Perhaps the most universal objection to the legislation was that the tribal members were too inexperienced to assume responsibility in the short transition period allowed. "Another reason I am opposed to this bill," testified a member of the Klamath Tribe, "is that of all the 2,000 enrolled members, I don't think there are four people that have graduated from college, and I doubt if there are one-third of them that have finished high school. * * * We would not be capable of a tremendously big job of incorporating our reservation in such a short period of time.[66] They are not educated enough to handle their own affairs," said a man from another tribe. "It has to take a period of time to thoroughly absorb all of the various ways you white people have in transacting business."[67]

Some argued that the provisions of the law would create almost irresistible pressure for immediate liquidation of the tribe's holdings by people who wanted cash and who would think in terms of the short run. "You are making it very difficult for them to keep that property," a Flathead argued. "The cards will be stacked against any in the group desiring to keep this intact and manage it. Because when you talk about $70 million here, $17,000 per family, the pressure to get that divided up is going to be awfully great, on the part of people who tomorrow, after they get it, may regret that kind of solution."[68]

During the course of the hearings many delegates raised objections to the legislation on various "procedural" grounds, regarding both the procedures followed in developing the legislation and the method of implementation set forth in the bills. One of the most common remarks of the Indians was that consultation with the tribes had been only pro forma, and had often been a very hurried process. Some tribes received the final proposal only a few weeks before the hearings.

One spokesman argued that the fundamental difficulty of the legislation was its complexity. If only the plan were "simple and direct and easy to understand, [it] would be accepted by most every group of southern California Indians."[69] Other Indians spoke of the difficulty in coming to a judgment on a highly technical piece of legislation in a tribal meeting. Some mentioned the impossibility of obtaining legal advice in the short period which was available to take action on the legislation.

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[63] Ibid., p. 964.
[64] Ibid., p. 1096.
[65] Ibid., p. 1121.
[66] Ibid., p. 68A.
[67] Ibid., p. 402.
[68] Ibid., p. 915.
[69] Ibid., p. 548.

Other delegates were concerned with the procedure outlined in the bill for terminating tribal affairs. "This bill in its present form," one witnss testified, "would give the Secretary of the Interior almost unlimited discretionary authority." [70] Under the law there would be no appeal from the decision of the Secretary on the question of tribal membership or in the selection of a trustee to liquidate tribal property should the tribe fail to reach a decision within the allowed period.

The method provided by the legislation for determining the disposition of tribal property also provoked objections. The bills provided for a referendum of all tribal members to determine the future of tribal holdings. In reservations where a larger percentage of the tribe had moved away, the future of those who still lived on the reservation could thus be determined by those with no such interest in the property. "Those who are living there, trying to make a living," said one witness, "ought to be favored." [71]

In the many generations of living on the reservation, some groups had become deeply attached to their homelands. "There is a pretty deep sentimental feeling there among any Indians who claim that place for their home. All of our forefathers and relatives have our cemeteries there on this reservation. I think those should be considered also * * *" [72] "If this Congress wants to do anything," said another witness, "just leave us alone. Leave those lands alone. Those lands are our home. We want them that way." [73]

Local officials and private organizations.—Fewer than half the termination bills brought local officials to Washington to testify. In each case where an official did appear, the reservation was either a wealthy one important to the local economy or one with extremely poor resources, threatening a serious drain on State and local resources in the provision of education, welfare, and other forms of community services. Local officials were subject to cross pressures, and their responses varied widely. Many looked with some favor on the general idea of transferring authority for local matters from Washington to the local government. This response generally prevailed in States in which the Indian groups were small or relatively self-sufficient. Conflicting with the desire for local authority, however, was the realization that the local government lacked the financial resources to assume major new responsibilities. The localities surrounding the poor reservations often possessed an inadequate tax base and were barely able to finance their present governmental services. The testimony of local officials from Montana, California, North Dakota, and Nevada, was uniformly in opposition and clearly made an impression on the committee.

Local citizens or representatives of local organizations took part in several of the hearings. In only one case, that of the Florida Seminoles, were they well organized and genuinely effective. Local citizens, and particularly members of Florida's women's organizations, did an effective job of gathering and presenting the facts about an Indian population which was largely illiterate, still living in extremely primitive conditions, and occupying potentially valuable land. While the State government was indifferent, the local organizations did an important service for the Seminoles. One incongruous result of this activity was the endorsement by several DAR chapters of a resolution favoring continued Federal responsibility and supervision.

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[70] Ibid., p. 432.
[71] Ibid., p. 913.
[72] Ibid., p. 1401.
[73] Ibid., p. 477.

Academic experts.—The massive record of testimony on the termination bills is perhaps most surprising for what it fails to contain. In more than 1,700 pages of testimony there is no statement by a sociologist, an anthropologist, a social worker, or anyone else trained in the social sciences. Although most reservations have been studied by social scientists concerned with Indian acculturation, the only evidence presented to the committee was a letter from an economics student who had spent a summer on one reservation. Academics failed to either participate in the hearings or to submit written statements for the record.

Members of the joint subcommittee.—The disputes which raged among the witnesses were in sharp contrast to the agreement which prevailed among members of the subcommittee. There was no real controversy throughout the hearings. With the exception of Senator Smathers, who attended a single hearing, no member made a statement in clear opposition to any of the bills. Democrats and Republicans, liberals and conservatives, the whole committee appeared to take a very similar view of the problems.

The subcommittee hearings occupied 18 days between February 15 and March 12. Meetings generally began at 10 a.m. and lasted until late afternoon or early evening. Hearings were held throughout the week and on Saturdays. It was an extremely demanding schedule and only the two subcommittee chairmen regularly participated. In spite of conflicting demands, Watkins took part in every Washington hearing, maintaining firm control over the proceedings.

"Many times," former Representative Miller wrote, "the hearings seem to be pro forma, just going through the motions, with the key decisions already made. They resemble a large verbal orchestration, as a 'record' is carefully shaped under the vigilant gavel of the chairman." [74] The one central impression emerging from the mass of testimony of the termination hearings is the domination of the Senator from Utah. Both in terms of information and in terms of a coherent philosophy of Indian policy, Senator Watkins was without challenge.

A conservative Republican from a conservative State, Watkins had a rather confined notion about the proper functions of government. "Personally," he said at one point, "I am in favor of taking away as many subsidies as we can * * *. Here we have a group of people who have innate ability just the same as other people, when they get stimulated with a little ambition and a little necessity. You know, necessity is said to be the mother of invention.

> It is the spur to drive all of us to do things we don't think we can do. And if there isn't that necessity there, we just don't move. If you get to the point where you are really dissatisfied, you do something about it." [75]

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[74] Clem Miller, "Member of the House" (New York: Charles Scribner's Sons, 1962), p. 8.
[75] Joint hearings, p. 678.

Speaking of the Flathead Tribe, Watkins praised those members who had successfully left the reservation. "Now," he said, "we have been watching this tribe of Indians for quite a long time * * *. And I believe they have made progress to the point where we should give serious consideration now to giving them further liberty. We are not trying to take anything from them * * *. We want to give them the liberty to handle their property as they would like to, as we would like to handle our property. And we would like to give that to them, that right, when they are able to handle that responsibility."[76]

Watkins was convinced that keeping Indian lands in Federal trust was the fundamental reason for the slow rate of progress. "As it stands," he said, "many of these Indians are in the depths of poverty, largely because they have not been able to use any of the assets in a businesslike way. They are in trust and they cannot do anything about it."[77] Speaking of the western Oregon tribes, he said, "I heard recently that one of the reasons why those Indians are pretty much independent is that they were given their property, most of them, years ago. Some of them sold it, some of them kept it. Probably most of them sold it. But they are quite independent now, able to take care of themselves."[78]

Watkins frequently invoked the "unanimous" passage of Resolution 108, explaining that the subcommittee was only executing the declared will of Congress. "We are acting under the direction of Congress, passed unanimously," he told one group, "to move in this direction whether we wanted to or not, if we wanted to discharge this duty. I mean, whether we had any personal aims to solve or to further or not, we at least have a duty to perform in accordance with the resolution adopted by the Congress."[79]

Watkins was profoundly discouraged by the record of Federal trusteeship. "I think," he said, "we have been operating now in many cases over 150 years as guardians of some of these Indians, and I do not think we can point with any degree of pride to what we have accomplished."[80] Progress could come only by total removal of Federal supervision. "We do not want the Government still in the business by any implication whatsoever," he told a BIA official. "If we have severed the cord which binds us to the Indians or the Indians to us, we want it completely severed, and not just a little strand left."[81]

Watkins had little patience with the concern for Indian treaties. When another subcommittee member suggested that a bill might violate treaty rights, Watkins answered:

> "It is like the treaties with Europe. They can be renounced at any time."[82] I would like to comment. * * * We have arrived at the point where we do not recognize now within the confines of the United States any foreign nations. You now have become citizens of the one nation. Ordinarily the United States does not enter into treaties * * * between any of its citizens and the Federal Government. * * * So it is doubtful now that from here on treaties are going to be recognized where the In-

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[76] Ibid., p. 819.
[77] Ibid., p. 49.
[78] Ibid., p. 235.
[79] Ibid., p. 1024.
[80] Ibid., p. 117.
[81] Ibid., p. 250.
[82] Ibid., p. 255.

> dians themselves have gone to the point where they have accepted citizenship in the United States and have taken advantage of its opportunities. So that that question of treaties, I think, is going to largely disappear."[53]

The fact of Indian citizenship not only served to deal with the issue of treaties, but also explained the necessity of ending tax exemptions for Indians. "Well," Watkins asked, "most of them vote on this Flathead Reservation, don't they? They have accepted citizenship." "Did they put any limitations on their acceptance and say, 'We expect to be just second-class citizens or citizens with special rights over and above all the rest?' "[54]

The Indians, he held, were being essentially selfish. "They want all the benefits of the things we have, highways, schools, hospitals, everything that civilization furnishes, but they don't want to help pay their share of it."[55] "Since I have been chairman of the Indian committees twice, I have never heard of any objection by an Indian about being an American citizen except in two or three cases."[56] Watkins believed that the basic reason for Indian opposition to the legislation was the desire to avoid their fair share of taxation. He demanded that the Indians accept the burden as well as the rights of citizenship.

The Senator was sharply critical of the proposition that the Indians were not prepared to assume responsibility over their property. "* * * nobody can walk for you. You have to do your own walking. And the only way you can walk is to use your own limbs. And you are doing that well. The United States, this guardian of yours, says you ought to go on with the job. He says you ought to go on with the job. He says you have now arrived at the point where you can do it yourselves. Aren't you going to honor that decision? You are setting your judgment against the President, the Secretary, the Indian Commissioner, and all the people who have studied this."[57]

"We do not want to take anything away from you," he told a Klamath Indian. "We want to take off the shackles and make you freemen, free to make a mistake or two if you want to, if that is the way it has to be done. That is the way most of us learned, by making a few mistakes. That is what we are trying to do for you, take the shackles off. We pay you a great compliment when we say we are sure you can do a good job. In fact, we think you will do a better job than we have for 135 years."[58] "I cannot be a party, personally, to seeing the United States go on and deprive the people, the citizens, who are able to take care of themselves, of the right to make their own decisions, and have the United States go on and make those decisions for them. That is a right you are entitled to have."[59]

Senator Watkins desired to enact legislation and to set a precedent, thus establishing a policy which could result in termination of many tribes. "I think," he said, "if there is one thing this Congress is in favor of and the American people are in favor of, it is the termination of the guardianship of these Indian tribes when they are ready for it, and when the Congress * * * determines that they are ready for it. And Congress has pretty well determined that in connection with the ones mentioned in Resolution 108." [90]

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[53] Ibid., p. 457.
[54] Ibid., p. 827.
[55] Ibid., p. 826.
[56] Ibid., p. 263.
[57] Ibid.
[58] Ibid., pp. 274–275.
[59] Ibid., p. 275.

He did not believe that Indian consent was a necessary condition for termination, contending that it would be 50 years before the tribes would agree. The Federal Government was the trustee of the Indians and must exercise its responsibility to decide when the trusteeship should be terminated. "Even though they don't like it," he said. "I think it is better for them to have more and more control of their properties. When they have arrived at a point where they can go to the polls and make decisions affecting all the people of the United States * * * then I think probably they ought to make decisions on their own property as well." [91]

In Watkins' mind, the manner in which the Negroes progressed demonstrated the correctness of his approach to the Indians. "See what the colored people have done * * * without reservations, without properties that come to them. They came here strangers. We forced them over here * * * and then suddenly upon the Emancipation Proclamation by President Lincoln, they were put on their own * * *. They have made remarkable progress as a race. And whatever the opportunities are for work, they get out and work, and they do take care of themselves." [92] The Utah Senator trod in the footsteps of the Great Emancipator.

Deeply convinced of the correctness of his policy, Senator Watkins did not hesitate to use pressure when he thought it wise. Thus, he told the Menominee Tribe of Wisconsin that he would hold up Senate action on a bill to distribute funds to tribal members until the tribe agreed to termination. After the tribe acquiesced, Watkins was still unsatisfied. He told tribal delegates that he wanted this legislation wrapped up during the present administration of President Eisenhower." [93] Because no other Member of Congress was interested enough to attend a tribal meeting, Watkins was able, at a crucial moment, to deal in a decisive manner with the Menominees on behalf of the U.S. Government.

Not infrequently, Watkins sharply attacked witnesses speaking in opposition to the legislation. This form of pressure was evident in his reaction to the testimony of two Klamath delegates. When the delegates testified that the general council, an open meeting of tribal members, had voted to oppose termination, Watkins strongly attacked tribal leaders for failing to mail out referendum ballots. "I doubt very much," he said "under the circumstances, that you can say you speak for the people when you won't let the people have a chance to express their views. That makes it pretty easy, then, for you to handle." [94]

Senator Watkins exercised a full range of techniques to maintain dominance over the hearings. Far more quiet, but unmistakably second in importance was Representative Berry. Attending more meetings than any other member, Berry had done a great deal of work on the legislation. During the hearings he often raised thoughtful and significant questions. When he took the opportunity to state his convictions, however, there was little to distinguish him from his Senate colleague.

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[90] Ibid., p. 656.
[91] Ibid., p. 668.
[92] Ibid., p. 670.
[93] Ibid., p. 700.
[94] Ibid., p. 267.

"Indians are just like white people," Berry told one witness. "They do not advance unless they do the advancing themselves, and you do not advance unless you try, do you?"[95] "It is just human nature, though," he said to another, "is it not, that when something does not cost us anything we do not like to take advantage of it?"[96] With a rapid series of short, pointed questions, Berry systematically took apart a Montana opponent of the legislation, finally concluding: "As a matter of fact, I assume that this effort that is being made is an effort to establish a political issue in Montana. Is that correct?"[97]

Berry shared Watkins' view that continued protection on the reservations would retard Indian progress. "You give them something," he said, "just a little less than they can live on, and he is going to live on it."[98] Berry's position, however, was by no means as unambiguous as that of the Senate chairman. At some points during the hearings he expressed real concern over the possibility of liquidation and exploitation of forest reserves. With broad experience in State government, he was distinctly more sympathetic to the problems of local government. At least twice during the hearings he suggested that some form of Federal "payment in lieu of taxes might well be necessary in some cases."[99]

After the two chairmen, Representative D'Ewart of Montana was the most regular participant in the hearings. Although in sympathy with the outlook of Watkins and Berry, he made few remarks regarding his broad philosophy. A legislative technician, he confined his questions and comments to such technical matters as the legal mechanisms to be established for noncompetents, and the condition of the tribal loan funds.

The members of the subcommittee who took part in more than one of the hearings all seemed in basic agreement with Senator Watkins. Representative Westland, a Republican member new to Congress, for example, made this comment to the delegate of a very poor band of Indians from Kansas. "If that is the case how can it be worse than it is now? I mean, it seems to be that a tribe like this has reached the depths, then, and how could they be worse off than they are? Perhaps if they were given their, let us say, freedom, and do not have the idea of relying and leaning on somebody, and if they had thought that they had to get things for themselves, perhaps that would be better."[100] "I have only been on this committee a very short time," said at another point. "But I have found that this committee is doing its level best to try to, if you want to use the word 'free' the Indians."[101]

Representative Donovan, a liberal Democrat from New York City, asked a witness early in the hearings: "You understand as I do, or am I wrong in my understanding, that this act is intended to enfranchise these 353 persons, Indians, to all intents and purposes, so that when the objectives of the act have been accomplished, 3 or 4 years from now, these Indians will stand on the same basis as all the white or yellow or dark citizens or inhabitants of that State?" [102] Everyone knew that something was wrong with the way the Indian people had been treated. Who could object to offering the Indian people "freedom"?

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[95] Ibid., p. 95.
[96] Ibid., p. 405.
[97] Ibid., p. 813.
[98] Ibid., p. 1324.
[99] Ibid., p. 1450.
[100] Ibid., p. 1383.
[101] Ibid., p. 345.

The assistant Democratic whip, Representative Engle, supported the termination policy at length:

> Now, perhaps if I were an Indian and I were operating my property and living on it and managing it but having none of the responsibilities of taxation that I might look with misgivings on this legislation. But I would be less frank if I did not say to the Indians here that you make a bad case for yourselves when you put it on the basis of absolute selfishness, that you want to remain under Federal wardship and in the status of subservient citizenship. It is not an appealing argument either to this committee or to the public generally, and I am perfectly satisfied that neither Congress nor the public generally will accept it. There is no reasonable legislator who is going to say that these people ought to be permitted to have a privileged sanctuary of Federal wardship for their own selfish objectives when in all other respects they are competent to handle their own affairs * * *.[103]

Virtually the entire subcommittee endorsed this philosophy, differing only about the extent to which it could be applied to particular groups. Liberal members of the subcommittee gave little attention to the legislation, and perhaps their assent is partially understandable in light of the unfamiliar position in which they found themselves. Accustomed to supporting reforms against conservative defense of the status quo, they were not confronted by Senator Watkins with a fundamental reform proposal for a very unsatisfactory situation. The new policy was justified in terms of "freeing the Indians," removing obstacles to their development, and giving them the full rights and responsibilities of citizenship. Watkins believed firmly in progress, and he insisted that the Indians were held back only by unfair restrictions on their property. Removal of these barriers, he contended, was basic to their effective freedom. The liberals were faced with the choice of either accepting this reform or defending a stagnant status quo. At first glance, the change was justified in the best liberal rhetoric. Lacking either the interest or knowledge to propose constructive alternatives, the liberals chose to support the termination proposal.

On June 17, 1954, 2 months after the completion of the hearings, the first bill passed Congress, terminating the Menominee Tribe of Wisconsin. During August, congressional action was completed on four additional bills. Termination of Federal supervision for almost 8,000 Indian people was thus written into law.[104]

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[102] Ibid., p. 86.

[103] Ibid., p. 478.

[104] Watkins, pp. 50–51.

The bills were considered noncontroversial, and in both Houses they passed on the Consent Calendar. Under this procedure the objection of any one Member is sufficient to prevent passage. Subcommittee action had previously eliminated the bills concerning the Montana Flatheads, the Florida Seminoles, and the Turtle Mountain Band in North Dakota. In each of these cases the tribes had strongly opposed the legislation and there had been congressional testimony in opposition during the hearings. In each of these instances, State government agencies or well-organized local groups had made an effective presentation of the case against termination. In no instance was a bill to pass where either Members of Congress or local governments were strongly opposed.

Three of the five groups which were terminated were unable to send delegates to the hearings in Washington. In all five cases, there had been at least some indication of Indian willingness to accept the policy. Senator Watkins had obtained tribal assent to three of the five bills by refusing to allow distribution of tribal funds. The acceptance of the Texas groups had been obtained by misrepresenting the substance of the legislation, and the bill was subsequently modified to meet some of the Indian objections. The agreement of some of the Utah bands had been obtained by promises which the Senate chairman failed to fulfill.

The Interior committees reported the bills to their respective Houses. A short formal report was issued stating the substance of the legislation. Without objection, the termination policy became law.

CHAPTER 2.—THE MENOMINEES AND THE CONGRESS

> After all the matter of freeing the Indian from wardship is not rightfully a subject to debate in academic fashion with facts marshalled here and there to be maneuvered and countermaneuvered in a vast battle of words and ideas. Much more I se this as an ideal or universal truth * * *.—Senator Arthur V. Watkins.

Unmentioned among a large group of private bill, the Menominee termination bill was enacted on July 17, 1954. The first of five bills passed during the session, the Menominee legislation "set free" a community of more than 3,000 Wisconsin Indians. Now began a 6-year period of intensive State and tribal planning attempting to anticipate and resolve the difficulties created by the drastic change in the status of the Menominee people. These years were to see a succession of attempts to amend or repeal the original legislation.

Prelude to termination.—Ironically, the very law which Senator LaFollette had sponsored to secure for the tribe permanent benefits of the forest resulted in a major impetus toward Menominee termination. The 1908 legislation had given the Forest Service responsibility for administering a sustained-yield harvest on tribal timberlands. In violation of this mandate, local agents decided to clear cut timber, depriving the tribe of valuable forest resources. Years later, in 1935, tribal leaders sued for damages in the court of claims.

The case stretched on for 16 years. Tribal attorneys reconstructed the "policies and motives of Congress, the U.S. Forest Service, the Department of the Interior, and their various agents and employees, after a lapse of nearly half a century."[1] The January 1951 verdict upheld the claim of the tribe and provided for an $8,500,000 settlement.[2] The money was deposited in the Federal Treasury, but any expenditure required congressional approval. This requirement was to prove an important source of difficulty for the Menominee Tribe.

Menominee funds now approached $10 million. The tribe was one of the "wealthiest" in the Nation. It was to be the peculiar misfortune of the Menominees to reach prosperity at precisely the time when a long festering attack on New Deal Indian policy was coming to a head.

In 1946 the Republican party had swept to control of Congress, believing their victory to be a mandate for the repudiation of the New Deal. Among the new Republican Senators was Arthur Watkins of Utah. Watkins came from a poor farming family and had struggled to work his way through law school. An important leader in the Mormon church, he shared Mormon skepticism of Government paternalism.[3]

Watkins' initial committee assignment was to be of decisive importance to the future of the Menominee tribe. A Westerner from an important public land State (he was given a seat on the Interior Committee, Watkins was immediately named chairman of the Indian Affairs Subcommittee. Having little sympathy for the New Deal policy fostering tribal development on the reservations, Watkins held subcommittee hearings on termination legislation in 1947.

During this year the Menominee tribe first became directly involved in the discussion of termination. The Acting Indian Commissioner listed the Menominees as one of 10 tribes which were "excellent possibilities" for withdrawal of Federal supervision within 10 years. The Bureau, in fact, submitted a draft bill which was relatively mild providing that tribal property be inalienable and nontaxable for 50 years.[4]

No action was taken, however, and the issue lost impetus when committee leadership changed after the Democratic victory of 1948. The question was raised again, however, in the 1949 report of the Hoover Commission calling for rapid integration of Indians and for transfer of Federal responsibilities to the States.[5] The new Indian Commissioner received the report sympathetically. Uninformed but aggressively confident, Commissioner Myer was determined to phase out the Bureau responsibilities as rapidly as possible.

As Indian policy evolved during the following years, the question of termination was "discussed off and on" by Bureau officials and Menominee leaders.[6] The tribe, however, showed no inclination to move in the direction of voluntary termination, and the issue did not come before Congress until 1952.

After a year of anticipation, the Menominees wanted to spend their judgment money. Tribal funds were still bottled up in Washington, and enormous pressure built up on the reservation. A bill incorporating a tribal plan for distributing part of the money to individual members and using the remainder largely for the timber industry was introduced in the House in 1952. Late in the session the Bureau of Indian Affairs recommended against passage until the tribe would agree to a complete plan for termination.[7] The bill was killed by the Senate subcommittee and the pressure was on the tribe.

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[1] H. H. Chapman, "The Menominee Indian Timber Case History," 1957 (multilithed) (in the files of the Wisconsin Legislative Reference Library) p. 9.

[2] Ibid.

[3] Beverly Smith, "The Job No Senator Wanted," Saturday Evening Post, CCXXVII (Nov. 13, 1954), pp. 26–27, 107–108.

[4] Joint hearings, p. 715.

[5] Frederick H. MacIntyre, "Congressional Control of Administration, A Study of the Bureau of Indian Affairs" (unpublished Master's dissertation, Department of Political Science, University of Chicago, 1959), p. 27.

[6] Joint hearings, p. 608.

In 1953, a new administration and new GOP majorities in Congress gave new life to the termination issue. The Menominees were at the forefront of discussion, and the tribe was specifically included among those listed in Resolution 108 directing the Interior Department to prepare termination bills. The battle began with the introduction of a new bill for a per capita payment. "That bill," Representative Laird recalls, "in due course passed the House. * * * But a most unexpected development occurred when the bill reached the Senate."[8] A series of Senate amendments provided for rapid termination of the Menominees.

The House passed Laird's original bill, but Watkins held the measure in committee while he met with Bureau officials to discuss amendments.[9] Tribal leaders recognized that Watkins held veto power over the bill and invited him to the reservation to explain his views. At a tribal meeting he told the Menominees that they could not obtain their funds unless they agreed to termination. The tribe then voted to accept the principle of termination.[10]

Watkins was determined to push his advantage. Although his bill was unanimously rejected by a later meeting of the tribe, it was easily pushed through the Senate.[11] In the conference committee the House conferees accepted the harsh Senate bill. The conference committee refused to hear either tribal delegates or Representative Laird, the sponsor of the original bill. When the conference report came before the House it was defeated, largely on the grounds that Laird had been denied a fair hearing.[12]

Termination now seemed inevitable to many Menominees, and tribal members were impatient to obtain their funds. In December 1953, the tribe voted to support a draft termination bill including a provision for a $1,500 per capita payment.[13] Early the following session the bill was introduced.

The Menominee Termination Act of 1954.—At 10 a.m., March 10, 1954 the Joint Subcommittee on Indians Affairs met for a hearing on the Menominee termination bill. The next 3 days were taken up with testimony on the legislation. No systematic opposition was presented to the bill. Once again, Senator Watkins completely dominated the discussions.

Following congressional custom, testimony was first presented by the two Wisconsin Congressmen representing the region. Representative Laird strongly endorsed the tribal bill. "It is my genuine pleasure," he said, "that I represent in my district what I believe to be the only Indian tribe in the United States possessing substantial resources, and agreeable to the principle of withdrawal * * *." [14] Laird's only concern was that the Wisconsin government had not been given sufficient time to evaluate the bill.[15]

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[7] Ibid.

[8] Melvin R. Laird. "Plea for Justice for the Menominee Indian People" speech before Congress, May 9, 1961 (reprint from Congressional Record.).

[9] Joint hearings, p. 608.

[10] Ibid., p. 700.

[11] Ibid., p. 700.

[12] Ibid., p. 594.

[13] Laird, "Plea for Justice."

The testimony of Representative Byrnes revealed that he had only the vaguest of ideas about the Menominee situation. He was unable to answer questions from the subcommittee and he had a vastly exaggerated idea of tribal assets. Expressing his strong support for the termination policy, he added one caution. "You do have a big business," he said, "and it is an important aspect as far as the general economy of Wisconsin is concerned. * * * It would be a frightful thing to the tribe and a frightful thing to the State as a whole if something should dissipate this or gets it tied up in a confused state." [16]

The members of the joint subcommittee had little interest in the Menominee hearing. Watkins alone was present on the third day, and he found it necessary to make an apology for the other members.[17] The record of the hearing was easily shaped to support the bill favored by the Utah Senator.

The Bureau of Indian Affairs gave unhesitating support to termination, asserting that the "3½ years provided in this measure will give them ample time to definitely plan for and assume the responsibilities and obligations * * *." [18] Bureau officials cited facts and figures to show that the Menominees met the standards of education and income prevailing in the surrounding area. They assured the subcommittees that the tribe possessed the ability to manage its own affairs.

Although there was no direct opposition to the legislation, questions were raised by the State government, by the tribe, and by an Indian interest group. Watkins sharply cross-examined these witnesses. A source of the Senator's special concern with the Menominee bill was evident when his first remark bitterly recalled the 1951 judgment against the Government.[19] He was to return to this topic several times during the hearing.

In the termination hearings the national Indian affairs groups presented a rather pathetic spectacle of ineffective self-appointed guardians of the Indians, possessing neither information nor influence. Thus the president of the Indian Rights Association supported termination but only "at a time and in a manner that will promote, rather than retard their progress." [20] "The Menominee Indians of Wisconsin," he added, "are probably better prepared for termination * * * than most Indian groups in the country." [21]

"Congress has to fix the policy," Watkins replied, "and not vacillate back and forth * * *. We start a program, and maybe next year we back out of it. So it keeps them upset all the time * * *. And they are always looking for the day when they are going to have all their wrongs righted * * *. I think we should get the thing settled and say, "Now go to it." [22]

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[14] Joint hearings, p. 594.
[15] Ibid., p. 596.
[16] Ibid., p. 606.
[17] Ibid., p. 713.
[18] Ibid., p. 586.
[19] Ibid., p. 596.
[20] Ibid., p. 663.
[21] Ibid., p. 664.

"We now have the executive department, the Indian Bureau, and the Congress pretty much in unison on this matter * * *. It is fine to have you people come in and give us your recommendations, but I wonder if you have really gone out and made the study of it in recent times that the Congress has * * *." [23]

The tribe sent a team of six delegates and a Washington lawyer to the hearings. The Menominee delegates did not oppose termination, but only pleaded for the time necessary to reorganize their economy and government. Watkins was impatient with these requests. He was anxious to have termination completed by the end of the first Eisenhower administration.

The first day of hearings revealed a deep split within the tribe. The subcommittee was presented with a petition signed by 249 Menominees claiming that tribal enrollment procedures had been illegitmate and that many non-Menominees had been entered on tribal rolls. Confronted by this internal division, Watkins' only reaction was that the government had better terminate before it was caught up in another expensive lawsuit.[24]

In several of the termination hearings the testimony of State officials had been of decisive importance. Wisconsin was taken by surprise by the termination bill, and the Governor sent the State tax commissioner to represent the State. Commissioner Harder was concerned about the problems of integrating the reservation into the State tax system, and, because of this interest, he was selected to go to Washington.

Trained as an auditor, Mr. Harder occupied a nonpolitical position. His concern was with enforcement rather than policymaking. He did not question the basic policy, but raised only technical issues of implementation. "Now it is my feeling," he said, "that the Congress has pretty well decided that there is going to be termination of supervision of the Menominee Reservation.[25] I am merely in the position that I am when appearing before the committees in Wisconsin, that we speak only from the administrative angle * * *." [26]

"Wisconsin," he said, "wasn't consulted at all," and yet the State would be expected to take full responsibility for assimilating the tribal members.[27] "Assimilation" Watkins replied, "would not be difficult." The testimony he had heard and his own study had convinced the Senator that assimilation was "almost complete as of now." [28] "Well," Mr. Harder answered in a notable understatement, "that is not 100 percent correct * * *." [29]

Harder found the rush for sudden termination "just a bit peculiar." "Now," he said, "the Federal Government has had those Indians for 100 years. Now the State is supposed to get everything ironed out in a couple of years." [30]

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[22] Ibid., pp. 671-672.
[23] Ibid., p. 672.
[24] Ibid., pp. 635-638.
[25] Ibid., p. 651.
[26] Ibid. p. 650.
[27] Ibid., p. 651.
[28] Ibid., p. 651.
[29] Ibid.
[30] Ibid., p. 655.

"Well," Watkins replied blandly, "the State itself suggested the idea that it ought to terminate, and we assumed that the State had been working on it * * *."[31] This assertion was false, but it was not challenged. Watkins pressed his argument for a prompt decision.

> Somewhere, sometime, we have to terminate this. And during the present administration we would like to see the thing moved to the point where something can be done about it. If we don't begin to set some deadlines * * * it will go on again and again and again. The United States has already suffered a loss of nine and a half million * * *.
>
> This tribe is probably better prepared than any other tribe in the United States. It sort of sets the pattern. If these people get 10 years or 12 years * * * the present generation won't see the termination. I think if there is one thing this Congress is in favor of and the American people are in favor of, it is the termination of guardianship of these Indian tribes when they are ready for it * * *.[32]

At the end of his testimony, Harder offered a new proposal. Arguing that it was too early for enactment of definitive legislation, he promised that if Congress would merely establish a termination deadline, the State would attempt to draft legislation acceptable to all parties.[33] This suggestion was ignored.

Senator Watkins believed that nothing would be done unless Congress took specific action. The State government would not take the initiative. "Going by past history, they will just conclude, 'This is just another one of those flurries that come along, where they want to do something about the Indians.' And they will say, 'Well, if and when they do it, we will get busy.' "[34]

The hearing concluded on March 12, and the subcommittees moved on to consider other bills. Reading over the record of the hearing, one cannot fail to be impressed by the degree to which it was dominated by one man. Senator Watkins' conviction had a religious quality and was held completely beyond doubt. He was sincerely convinced that he had found the solution to the problem of the Indian people. Watkins was willing to give an extraordinary amount of his time to this question. Extremely effective in hearings, he was always able to find a remark which would place the onus for delay on an opposition witness. He maintained the initiative throughout the hearing and was able to construct a record overwhelmingly favorable to the bill.

Watkins was not only able to dominate the hearings, but also succeeded in creating the framework within which the legislation was considered. The terms in which the bills were discussed were Watkins' and his perspective remained dominant even when the leadership of the subcommittee passed into liberal hands. Watkins' deep conviction and his tireless work led members of both parties to accept a major policy innovation.

The hearings were concluded, and the legislation was now considered at a number of "informal conferences."[35] The bill was considered separately by the two subcommittees and the results were significantly different. Predictably, the Senate subcommittee recommended a bill conforming with the wishes of Senator Watkins. The House subcommittee however, approved a bill following the outlines of the tribal proposal.[36] When the bills went to a conference committee, Watkins was able to gain acceptance of the general provisions of the Senate bill.[37]

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[31] Ibid.
[32] Ibid., p. 656.
[33] Ibid., p. 660.
[34] Ibid., p. 731.
[35] Laird, "Plea for Justice."

Congressional procedure now gave a strategic advantage to the proponents of the milder legislation. Watkins wanted the bill passed as rapidly as possible, but Representative Laird could block action by a simple objection when the measure came before the House on the unanimous consent calendar. After the House rejected the conference report, compromise was necessary. A second conference committee reported a bill far closer to the House version, allowing 4½ years before the termination date, December 31, 1958. The termination bill passed Congress in early June and was signed into law on June 17, 1954.[38]

The process of termination was underway. During the course of the next 7 years, the legislation was to be shaped and reshaped before it reached its final form. In the interaction between the tribe, the State, the Bureau of Indian Affairs, and the subcommittees of Congress, the outline of the future Menominee community was drawn.

Action was completed on the termination bill, but the 83d Congress was to enact another measure had an impact on the Menominees. The conservative faith in the beneficient effect of individual property rights was tempered by a measure embodying the liberal faith in education. The same Congress which enacted termination also approved a program of "adult education" for the members of several terminated tribes. The act was intended to "help the members of the tribe earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens * * *"[39] Although the act provided this program only for certain Western tribes, the Indian Bureau "interpreted" the law to include other tribes scheduled for termination. Thus the Menominees became eligible for a 5-year crash program in vocational education. Ironically, tribal acceptance of this program was later used as an argument against Indian requests to extend the termination deadline. The Menominees, it was asserted, had accepted the special benefits offered by the government and therefore they must promptly uphold their part of the bargain.

Less than a year after passage of the termination act, Menominee leaders realized that successful termination would require more time. As the tribe planned an effort to gain an extension, a new figure entered the legislative scene. Representative Reuss, a young Congressman from Milwaukee, with ambitions for statewide office, visited the reservation, and "studied" the situation. He suggested an amendment calling for Federal payment of termination expenses and for delay of termination until both the tribe and the State government agreed to a specific plan. The Menominee advisory council and general council voted to support these amendments, and they were submitted early in the 1956 session.

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[36] Ibid.

[37] Representative Miller explains the workings of conference committees in "Member of the House" (New York) : Charles Scribner's Sons, 1962, p. 113. The committees "make their own rules. The watchword is informality. Committee meetings are bargaining sessions between principals who know the game. The preliminaries are out of the way * * *. Now is the time to hammer out the finished product * * *. The resultant bill, identical to the last comma, is returned to each House. No amendment is possible, accept or reject. Almost always the conference report is accepted."

[38] Laird, "Plea for Justice."

[39] Menominee News, Feb. 25, 1955, p. 1.

The Amendments of 1956.—The Interior Department submitted reports to the House subcommittee indicating its strong opposition to any basic change in the termination law, but conceding that some Federal aid might be necessary. By the end of 1955, the Department reported, the tribe retained only 20 percent of the funds it held when the law was passed. A provision for payment of the tribe's termination expenses was approved readily in each subcommittee.

Other changes, however, raised more central issues. The Department opposed a provision requiring continued sustained-yield management of the forest. Even the goal of conserving forest resources did not justify this change. The termination act, the Department claimed, "granted to the Menominee Indians the same rights with respect to their property that other citizens have. We believe that the tribe should not be placed under special restraints by Federal law * * *"[40]

The departmental report objected even more strongly to the proposal to extend the termination deadline.

> "* * * this provision of the bill is in effect a requirement that * * * the Indians must consent to the termination of Federal supervision. Ultimate responsibility for determining when the time has arrived for terminating a Federal trust responsibility rests solely with the Congress. The Indians have no vested right to the continuance of the trust relationship."[41]

The Department saw the requested extension as "premature," and quoted the Wisconsin attorney general "as likening the bill's lack of a deadline to an 'almost never due date on a business loan.' "[42]

In another letter to the subcommittee, the Interior Department claimed that the legislation was simply a device allowing the tribe to stall until they were given preferential treatment by the Wisconsin Legislature.[43] The opposition of the Department resulted in a serious reverse for the tribe before the House committee. Reports of the amendment created an unfavorable reaction in Wisconsin; State officials and newspapers charged the tribe with failure to keep its bargain. The original bill was withdrawn and a new bill, eliminating the controversial provision, was submitted. The deadline for completion of the tribe's termination plan was now moved to December 31, 1957, a full year earlier than the original law. The tribal delegation decided that the bad publicity made acceptance of the change necessary to prove the good intentions of the Menominees.[44]

The amended bill did not withdraw the provision for sustained-yield management. Concerned about the conservation of an important forest, the subcommittees willingly acceded to the tribal delegates' request for such a provision. The substitute bill now passed without serious objection. The report of the Senate subcommittee stated that the Menominees "anticipated no difficulty" in meeting the new deadline for submission of the tribal plan.[45]

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[40] U.S. Congress, Senate, "Relating to the Plan for Control of the Property of the Menominee Indian Tribe, and for Other Purposes," 84th Cong., second sess. Rept. 2412, p. 3.

[41] Ibid., p. 4.

[42] Ibid., p. 4.

[43] Ibid., p. 6.

[44] Menominee News, July 26, 1956, p. 1.

The leader of the tribal delegation, however, saw the action of the subcommittee in a different light:

> * * * during the hearings * * * it was the desire of both Congressman Melvin R. Laird * * * and Congressman Henry S. Reuss * * * to include as an amendment to Public Law 399, the extension of time for another 2 years * * *. It was felt at that time that the question of an extension of time was premature * * *. We were assured by the committee or some members, in informal conversations or in the hearings, that should it be necessary for an extension of time, Congress was ready and willing to consider such a request.[46]

The 1956 legislation represented a setback for the tribe. The only real gain was the acceptance of the provision for Federal financing of termination expenses. Although it then seemed desirable, the sustained-yield provision was to greatly reduce the options of the tribe, thus denying a fundamental purpose of the termination act. This requirement reduced the market value of the forest by at least two-thirds. Although tribal members had made no decision, the option of liquidating tribal property now became unreal. The most serious reverse to the tribe, however, was the defeat of the extension.

Nineteen hundred fifty-six was the final year of the 84th Congress, and the last year in which Senator Watkins led the Indian Affairs Subcommittee. As the year ended, Watkins viewed the prospect for a successful Menominee termination sanguinely:

> In many ways the most interesting of the decontrol projects to date, it also marks a fine example of State and local interest and cooperation * * *. An enlarged tribal organization has taken over many service functions * * *. The greatly reduced agency staff is now largely devoted to advisory and trust-management activities. For the balance of the transitional period it will be a "learn-by-doing" process for the Menominees * * *.[47]

The legislation of 1957–1958.—The 85th Congress organized in 1957 with Democratic majorities. Senate Interior Committee Chairman Malone, who had once proposed abolishing the Indian Bureau,[48] was now replaced by Senator Murray of Montana, a liberal who credited his election to Indian votes. No new bills for termination were acted upon during Murray's chairmanship. Senator Watkins was replaced as chairman of the Indian Affairs Subcommittee, by Richard Neuberger, an Oregon liberal often at odds with the Interior Department.[49]

Under new leadership, an attempt was made to repudiate the termination policy. Senator Murray introduced a resolution declaring that "full-scale economic development" was the basic objective of Indian policy, and that it should be accomplished without "exacting termination of Federal protection of Indian property or any other Indians rights as its price."[50] During the hearings on this resolution, Senator Neuberger made clear his position on termination:

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[45] U.S. Congress, Senate, "Relating to the Plan," p. 2.
[46] Menominee News, Jan. 20, 1955, p. 4.
[47] Watkins, p. 54.
[48] MacIntyre, p. 53.
[49] Time, Nov. 15, 1954.

> My own personal attitude toward termination may be biased * * * the only specific example of termination with which I am thoroughly familiar is that in my own State, which has certainly become a major responsibility of mine, and that is the Klamath Tribe. With all due deference to the philosophical principles involved in termination, I have a disdain for termination, because of the specific examples there * * *.
>
> I would agree with you on much of the general principle involved. But there is a specific example where we are confronted not with a theory but a condition. And it seems to me that the Klamath example, where we are up against the gun now, with a legal shotgun at our head as the alternative of a forced and hasty liquidation of these assets if we do not postpone termination * * *.[51]

Neuberger saw the question of termination as a specific practical issue involving the problems of one tribe with which he was very familiar. The protection of the Klamaths and the preservation of the Klamath forest remained at the center of his interest.

No change was made in Federal policy, and the Menominees returned to Congress again requesting an extension of the termination deadline. Representative Laird submitted a bill for a 2-year postponement, but it was not warmly received. The chairman of the House subcommittee wrote to the tribe demanding justification. In enacting the 1956 legislation, he said, the subcommittee "was given assurance that ample time was being provided all concerned to draft and submit the plan in question before December 31, 1957. I am most interested in what impelling and unforeseen circumstances have arisen * * *. Upon receipt of these statements the Subcommittee * * * will consider scheduling hearings on H.R. 6322."[52]

The tribal chairman promptly replied, explaining the delays in the University of Wisconsin studies and the need for time to enact State legislation. The House subcommittee proved sympathetic, and the members approved a bill even more generous than that submitted by Representative Laird. The House bill provided a 2½-year postponement of the termination deadline.[53] In the Senate, however, the bill fell victim to an intramural squabble.

As chairman of the Indian Affairs Subcommittee, Senator Neuberger had guided a bill for full payment of Klamath termination expenses through the Senate. The House rejected this provision, although a similar provision for the Menominees had been accepted. Senator Neuberger then decided to approve the Menominee amendments only if Menominee reimbursement was reduced to 50 percent of termination costs. In addition, the Senate would allow only a portion of the postponement granted by the House. A conference committee was unable to resolve the differences and Congress adjourned with no resolution to the tribal dilemma.[54]

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[50] U.S. Congress, Senate, Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, Hearings, Federal Indian Policy, 85th Cong., first sess., 1957, p. 80.

[51] Ibid., p. 267.

[52] Menominee News, July 20, 1957, p. 4.

[53] Milwaukee Sentinel, Sept. 1, 1957.

The deadline for the submission of the termination plan arrived on December 31, 1957. Technically, the legal requirement was met by the submission of a progress report euphemistically labeled "termination plan." Attention focused on the new session of Congress.

Senator Neuberger remained adamant, and bitterness increased. Representative Laird lost his patience and publically attacked Neuberger's position. "This is a matter of pure spite on Senator Neuberger's part," he told a reporter.[55] Laird still hoped that agreement to the postponement could be obtained.[56]

Knowing the Menominees had to have the legislation at any price, Neuberger was unbendable. Finally, on April 30, 1958, the House conferees capitulated and accepted Neuberger's amendments. Laird issued a statement asserting that the reduction in Federal assistance for termination expenses constituted a "breach of faith" with the Menominees. The Neuberger amendments, he said, were "just another example of Democrats running roughshod over minority groups."[57]

In Wisconsin, the decision created an indignant reaction. The Governor charged the conference committee with "flagrant betrayal" of the tribe. Not to be outdone, three leading Democratic officials quickly announced that Wisconsin Democrats in the House had been asked to fight the conference report.[58]

In the face of the strong objections to the bill, Representative Laird attempted to have the conferees reconvene. It proved impossible, however, to significantly alter the provisions of the bill. The final conference report was presented to the House in early June, and the bill became law on July 2, 1958.[59]

The Menominee delegates left Washington with a Pyrrhic victory. An extension of time was essential, but it had been gained only at the price of assuming half the costs of termination. Tribal finances were badly depleted, and this was a heavy price indeed. The tribe had bought one additional year to prepare its plan. The dim prospect for further concessions was evident in the remark of the House subcommittee that it would "not look favorably upon requests for another delay."[60]

The 1960 amendment.—Unable and unwilling to meet the termination deadline, the Menominees returned to Congress 2 years later. In 1960 the tribal delegates confronted a Senate subcommittee where a great deal had changed, and yet much remained the same. Watkins had been defeated. Neuberger was dead. Senator Church, a young Idaho Democrat, now chaired the subcommittee. The real leader, however, was Senator Anderson of New Mexico, an active participant in subcommittee proceedings and the chairman of the parent Interior Committee. Anderson shared Senator Watkins' viewpoint on this issue, and his involvement with the Menominee legislation dated back to his participation on the first conference committee in 1953. Support of this position was further strengthened by the addition of the two new conservative members to the committee, Goldwater of Arizona and Allott of Colorado.

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[54] Ibid.

[55] Racine Journal, Apr. 4, 1958.

[56] Ibid.

[57] Green Bay Press-Gazette, May 1, 1958.

[58] Green Bay Press-Gazette, May 8, 1958.

[59] Racine Journal, May 19, 1958.

[60] U.S. Congress, House, Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, 85th Cong., 2d sess., Rept. 1013.

At the request of the Menominee tribe, Representative Laird introduced legislation providing for Federal payment of all termination costs, exemption from stamp taxes on corporation documents, a development loan fund for the tribe, and granting authority to the Secretary of the Interior to set a new termination date. Laird predicted "rough sledding" for the measure. One democratic member of the Indian Affairs Subcommittee told a Wisconsin reporter that he "could go along with 3 months extension of termination if needed, but the provision giving the Interior Secretary the authority to set the termination date could result in dragging out Federal supervision over a long period of time." [61]

In the subcommittee a compromise was reached. The stamp tax provision was accepted and the tribe was granted a 6-month extension to work out details "of certain health, sanitation, educational, and public utilities improvement programs and the creation of the new Menominee county." [62] The subcommittee demonstrated its determination to prevent further extensions by adding a harsh provision allowing the Interior Department to take action without tribal approval if the provisions of the termination plan were not met.[63]

Senator Church showed his lack of enthusiasm for the House bill by refusing to schedule Senate hearings during the regular session of Congress. A hearing was finally held during the short session following the 1960 political conventions.

As the hearing began, the Interior Department recommended that reimbursement of termination expenses be approved. Sufficient funds had been appropriated in an earlier Congress and no new appropriation was necessary.

> We recommend the enactment of the bill * * * on the ground that termination expenses have been heavy, that the tribe's cash resources in the U.S. Treasury will be reduced by the termination date to approximately $2 million (which is the minimal amount needed for the operating capital for the sawmill enterprise alone, leaving no funds for launching of the local government), and the Federal Government can afford to be generous under these circumstances.[64]

The subcommittee devoted little time to this proposal during the hearing and refused to approve reimbursement.

The central issue of the hearing was the question of an extension. The Budget Bureau was strongly opposed to the tribal request, while the Interior Department responded with an uncertain "no". "We recommend," the Department reported, "that the bill be not enacted in its present form. However, if after considering all of the facts * * * Congress feels that a postponement is desirable, then we have no objection * * *." [65]

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[61] Green Bay Press-Gazette, Apr. 22, 1960.

[62] Laird, "Plea for Justice."

[63] U.S. Congress, Senate Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, *Hearings, 1960 Amendments to the Menominee Indian Termination Act of 1954*, 86th Cong., 2d sess., 1960, p. 4.

[64] Ibid., p. 33.

Department officials saw no real justification for a delay. Responding to the tribe's claim that basic changes were necessary in sewer, water, and electricity systems to comply with minimum State standards, the Department blandly replied: "The existing systems are functioning. Whether they should continue * * * is a question that need not delay termination. The State cannot be expected to close down the present systems arbitrarily without providing a reasonable time in which to provide alternative service. If the real point is that the Federal Government should finance the tribe in establishing new systems, we feel that the argument has even less merit." [66]

Senator Proxmire, who had become an active spokesman for the tribe, argued the case for the extension:

> I believe the case for postponing the date of termination is clear. The tribe faces many problems of a character which would stagger the abilities of a long-established modern city. In one fell swoop it must create a local and county government * * *
>
> Postponement of termination has the support * * * of the Governor. State welfare, health, and education authorities have stated that additional progress is necessary in these fields before an orderly termination can take place.[67]

These arguments were not well received by Senator Anderson, the man who was to set the tone of the hearing. The Menominees, he believed, had not shown good faith. Congress had been extraordinarily tolerant and willing to give assistance, but the tribe only seemed interested in finding excuses for extensions. Now, he asserted, the patience of Congress was exhausted:

> They have known since 1954 that they were supposed to terminate in 1958 and they said: "Just give us a little time and we will make it in 1960." [68]
>
> Congress came very close to not passing an extension in 1958. But everybody came in here and held up their hands and said, "Oh my, just give us one more chance and we will get all this done."
>
> Here is what the conferees said. This is 1958. "The conferees strongly urge that all agencies and individuals concerned with the Menominee termination program recognize the importance of fulfilling their obligations as expeditiously as possible. They would look with disfavor on further requests to delay the termination * * * " They served notice. What happened? You know these baseball records—zero, zero, zero.[69]

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[65] Ibid., p. 5.
[66] Ibid., p. 6.
[67] Ibid., p. 35.
[68] Ibid., p. 26.
[69] Ibid., pp. 36–37.

Committee members were irritated by the requests for another extension. The following exchange among the 3 most active participants illustrates their approach to the bill:

> Senator ALLOTT. I would want the record, if this were passed by the committee to be absolutely clear that this will mean a flat termination date. * * * We got through this time and time again. It is one of our major problems * * *.
>
> Senator ANDERSON. How much more definite can you get than the last report? The committee said, no more now, this is the end. How long do you have to throw money away before you realize that maybe these people ought to be required to do something for themselves.
>
> Senator CHURCH. I was one of the Senate conferees at that time with Senator Neuberger and Senator Watkins * * * and I remember the emphasis that was placed in the course of the conference on the desirability of no further extension of time.[70]

The Menominee delegates argued that the extension of time was warranted on the grounds of unexpected financial difficulties, deep divisions within the tribe, and problems in finding qualified men to fill the key positions in the new business and governmental organizations. The tribe's economy was characterized as "marginal" and the subcommittee was told that tribal earnings were too small to support local government. After termination, the business would face a series of new costs "such as workmen's compensation, unemployment insurance, unionization of labor, medical program, loss of Government purchasing of supplies and materials, transportation of logs and lumber by licensed vehicles and all forms of taxation on property * * *"[71]

Economic expansion was necessary, but the timber market was in a severe decline. While the termination plan envisaged an increase of more than one-third in timber cut, the timber harvest had actually fallen drastically. By 1960, income was at half the level of the years between 1956 and 1958.[72]

Further problems arose from the fact that the mill served a double purpose. Not only did it provide income for the tribe, but it also served as the sole important source of employment. The economic pressure for increased income to finance the county and the competitive pressure from other mills would demand automation. Automation, however, could take the jobs of more than 80 percent of the men in the mill operation.[73]

A number of antagonistic factions had developed within the tribe, reported one delegate, and the internal divisions threatened to destroy the effectiveness of termination planning.[74] In fact, just 3 months earlier a tribal council meeting marked by bitterness had dismissed a delegation led by the longtime tribal chairman. A new group was elected to represent the tribe before Congress.[75]

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[70] Ibid., pp. 40–41.
[71] Ibid., p. 62.
[72] Ibid.
[73] Ibid., p. 64.
[74] Ibid., p. 70.
[75] Melvin L. Robertson, "Chronology of Events Relating to Termination of Federal Supervision of the Menominee Indian Reservation—Wisconsin" Report prepared by the Superintendent of the Menominee Agency, May 31, 1961 (in the files of the Agency), p. 41.

The new delegation represented a far more radical segment of tribal opinion. While previous delegations gave assurances that further extensions would not be necessary, no such pretense was made now. The attitude of the delegates crystallized the position of the subcommittee. The essence of the hearing is contained in this exchange:

> Senator ANDERSON. These are problems that are going to last for an eternity. Is termination to be put off for an eternity?
>
> Mr. GRIGNON. I don't believe it is.
>
> Senator ANDERSON. How long would you say it was?
>
> Mr. GRIGNON. I am no expert.
>
> Senator ANDERSON. Five years?
>
> Mr. GRIGNON. I would say in that neighborhood to get this modernization * * * Not committing the tribe, I would say what you say, 5 years. I believe if we are to terminate December 31, with our economy so low where we cannot afford this county * * * " we will go until our money runs out. It is a question of what reserve we have in our fund.
>
> Senator CHURCH. I think what Senator Anderson said was pretty wise. He suggested if you went on your own initiative, responsibility, and resources, you might find a little resurgency of energy in the operation of the mill and things of that nature that might carry you along. It is the constant spoon feeding from the Federal Government that has held you back * * * Some tribes have terminated, you know, and they are getting along pretty well. But not the Menominees.
>
> Mr. GRIGNON. I believe one thing, Senator. If we were still making the kind of [76] money as in 1958, I believe we certainly could terminate December 31 and be successful.

Presentation of concrete difficulties by delegates seemed only to stimulate the recitation of ideological formulas. The subcommittee believed that the Menominees were stalling for time, in violation of the demands of honor imposed on them by the previous generosity and patience of the subcommittee. There was no willingness to reexamine the underlying assumptions which had been accepted when the legislation was enacted in 1954.

The perspective of the subcommittee was still limited by the perspective of Senator Watkins. Watkins had succeeded in enacting a basic policy innovation, and in committing the subcommittee to the new policy. Now the members were less concerned and less willing to consider the fundamental issues of Indian policy. A challenge to the Termination Act had become a challenge to the prestige of the subcommittee.

No single man on the 1960 committee could equal Watkins in both his unrestrained optimism about the progress of the self-reliant man and his deep pessimism about the motives of the Indian leaders. Each of these viewpoints, however, still had its strong exponent on the subcommittee.

Senator Anderson, the pessimist, believed that the Indians were trying to get away with something which both they and the subcommittee realized was wrong. He accused the tribe of throwing away its own money and then expecting Congress to provide a big loan fund.[77] He closely followed the statements of the delegates and sharply criticized them for attempting to mislead the subcommittee.

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[76] U.S. Congress, Senate, Interior Committee, hearings, 1960 Amendments * * * pp. 66–67.

Senator Church, on the other hand, was the spirit of elevating optimism, eloquently praising the uplifting effect of freedom from the Federal bureaucracy. "I would venture to predict," he said, "that once this termination is completed and the Indian people * * * are thrown upon their own resources and on processes of self-government and look to these resources for the kind of further economic development that is required that you are going to be better off in the years to come * * *."[78] After all, he explained, "if that had not been the basic concept, the Termination Act would never have been enacted in the first place."[79]

The application of broad philosophical principles to social reality is an indulgence seldom allowed in American politics. Perhaps behind every Senatorial toga there lurks something of the aspiring philosopher. It is easy to find gratification in coming up with an abstract solution for a social problem which isn't important enough to examine closely. The Indian tribes are groups far too small, too divided, and too inarticulate to attract attention to their protests.

The day after the hearings concluded, the subcommittee met to take action on the bill. Much of the morning was spent in a closed session. The subcommittee decided that no extention should be granted, and demanded that the tribal corporation be organized two months before the previous deadline.[80] The recommendations of the subcommittee were then unanimously approved by the Interior Committee.[81]

Representative Laird was sharply critical of the measure. Tribal delegates asserted that the Senate bill was even worse than the existing law. Of Laird's four requests, only the stamp tax exemption was intact.[82]

Three days later, on August 25, an "emergency" meeting of the Interior Committee was called. The committee heard a personal appeal by Senator Wiley urging modification of provisions "extremely detrimental" to the Menominees.[83] The committee approved a compromise measure allowing two additional months for organization of the corporation and a 4-month postponement of the final deadline. Should the tribe fail to meet the deadline, the Interior Department was directed to turn all tribal assets over to a private trustee. The bill was harsh. With only one week remaining in the session, the Menominees were in no position to bargain.

The Senate committee was reluctant to grant even these concessions. The committee report was written in an accusing tone:

> As the testimony developed it became obvious to the subcommittee members that the real purpose of the 6-month delay requested by the tribe was * * * to seek additional time in which to again obtain further legislation from Congress

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[77] Ibid., p. 61.
[78] Ibid., pp. 59–60.
[79] Ibid., p. 60.
[80] Green Bay Press-Gazette, Aug. 18, 1960.
[81] Green Bay Press-Gazette, Aug. 23, 1960.
[82] Ibid.
[83] Green Bay Press-Gazette, Aug. 26, 1960.

> extending the final termination for as much as 2, 3, 4, or 5 years or even outright abandonment of the program. The tribual witnesses frankly admitted this fact, and that admission is consistent with the pattern of bills requested by the tribe during the past 5 years, two of which provided for an open-ended termination date. * * *
>
> During the past 6 years tribal funds have been dissipated to the point of endangering the success of the corporation. * * * In the same period the Federal Government has spent $2.3 million to prepare the tribe for termination. If the plan of the Menominees is to be successful it must be put into operation as soon as possible. The subcommittee is of the opinion that if the tribe is fully convinced that Congress will not grant additional extensions of time—then constructive steps will be taken.[84]

Once again a tribal delegation had gone to Washington in an attempt to improve the tribe's situation. Once again they gained slight and temporary relief, but only at a high price. The special session was almost over, and the House accepted the Senate bill. Thus the final amendmént to the termination act became law.

The Hearings of 1961.—The play was not yet finished. A final, anticlimatic act was added just before the final curtain was scheduled to drop on the history of the Menominee tribe. In early 1961, the Menominees sent another delegation to Washington again requesting a capital loan fund, Federal payment of termination expenses, and another postponement of termination.[85]

Less than 3 weeks before the termination deadline, the House committee scheduled a hearing. Laird appeared before the committee and expressed his gratitude for the support for tribal legislation in previous years. He admitted that passage of the amendments might be "a wasted effort" because of the adamant opposition of the Senate subcommittee.[86] Because of Senate intransigence, Laird suggested that the best way to help the tribe would be a program of Federal assistance to be phased-out over a 6-year period.[87] "It would seem to me," he said, "that the Menominee Tribe * * * deserves more considerate and real attention from the political conscience of the United States in its present dilemma." [88] The House committee refused to support postponement, but did approve a bill authorizing a $2.5 million loan fund and providing for phased Federal payments during the transition years.[89]

The House committee had scheduled a hearing as soon as the Interior Department report on the bill was prepared. In the Senate, Anderson refused to schedule a hearing in spite of repeated requests from Senators Proxmire and Wylie. Only after Governor Nelson met twice with Senator Anderson was a hearing finally scheduled.[90]

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[84] U.S. Congress, Senate. "Amending the Menominee Termination Act," 86th Cong., second sess., 1960, S. Rept. 1907 to accompany H.R. 11813, p. 4.

[85] Laird, "Plea for Justice."

[86] Melvin R. Laird, "Statement before the House Interior and Insular Affairs Committee," Apr. 10, 1961, p. 1 (mimeographed).

[87] Ibid., p. 3.

[88] Ibid., p. 4.

[89] Laird, "Plea for Justice."

[90] Jerome Grignon and Al Dodge, "Progress Report on Pending Menominee Legislation in Washington," Apr. 6, 1961, p. 1 (In the files of the Menominee Agency).

During these final days of hearings, a concrete plan was under discussion for the first time. The problems were not immediate problems caused by the impossibility of meeting basic governmental needs. The principals were all present. The committee heard Attorney General Reynolds, who had presided over the hectic final planning for State actions. Members heard Senator Proxmire's clear statement of the basic issues, and they confronted a new Interior Department official, far less certain of the wisdom of the termiation policy. The subcommittee was able to question Mr. Sammond, the priminent Milwaukee lawyer who had created the complex corporate structure of Menominee Enterprises. The sessions were full of conflict, of expressions of doubt, and of penetrating questions. When the hearing was over, however, it was clear that it had come too late. Nothing much was done.

All 3 days of hearings were well attended by subcommittee members. Once again the basic pattern was one of leadership by Senator Anderson, with the support of Senator Church. Senator Church opened the hearing with criticism of the tribe:

> I think it is well-known and understood that this committee, following the hearings of last August, took the position that there should be no further extensions * * * I think it is disappointing that we are again confronted with legislation on this subject when the termination date is a matter of days away, but I think we all knew in our own minds last year that this would probably happen.[91]

Senator Proxmire, the first witness, proceeded to attack the entire termination policy. "I think it is well to remember," he said, "that the termination proceedings did not stem from the initiative of the people most directly concerned, the Indians. Rather it was thrust on them by Congress, to a significant extent at the instigation of the very subcommittee * * *"[92] He quoted a report predicting that "the upheaval among Indians would be not unlike that caused by superimposing the laws of New York on New Mexico with its different needs, people, cultural, and legal heritage."[93]

Proxmire pointed out that Congress itself had shown uncertainty about the legislation, and that "individual termination acts have had to be amended and reamended, to meet additional contingencies and problems as they came into view."[94] The Klamath Termination Act, he said, had been changed basically four times, with the final program calling for expenditure of $70 million to purchase the forest. Senator Anderson replied that he was "not hostile" to a similar program for the Menominees. "In fact," he said, "this forest abuts a national forest. As the Senator from Wisconsin may know, I am a little bit enthusiastic about the Forest Service * * *"[95]

Continuing his testimony, Proxmire argued that there was a serious contradiction in the termination program. "It is apparently believed," he said, "that no member of the tribe is qualified to hold the top managerial positions in the sawmill which is their chief source of revenue.

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[91] U.S. Congress, Senate, Committee on Interior and Insular Affairs, Indian Affairs Subcommittee, "Amendments to the Menominee Termination Act," 87th Cong., first sess., 1961, pp. 1–2.

[92] Ibid., p. 7.

[93] Ibid., p. 8.

[94] Ibid., p. 9.

[95] Ibid.

Yet the same tribe is now scheduled to embark on an adventure in self-financed self-government which would challenge the abilities of almost any group of similar size." [96]

> Each of us is familiar with one or more small communities * * * that are at present facing economic and social difficulties. One of the most common causes for such problems is a decline in the single industry which for generations may have supported the town. * * *
>
> The economic situation in which the Menominees today find themselves resembles the plight of the declining rural town in many respects. But * * * the Menominee community is now expected to set up a new local government of its own, with a brand new budget, social, health, and police services, and all the other components of a new country.[97]

Proxmire's support for a $2.5 million loan fund for capital development provoked sharp disagreement. The bill proposed that the funds be available for "expansion and modernization of existing tribal enterprises and for the development of tribal resources." [98] Senator Church criticized this provision as "a very broad authority." [99] Senator Anderson was deeply critical of the manner in which the tribe has "dissipated" its resources. "If I wanted to," he said, "I could go down to the bank and draw out the little bit of money I have down there and throw it in the streets. But you would not blame the bank if I throw it in the streets." [100]

Senator Church asserted that the committee wanted to be just to the Menominees:

> We are not going to close our minds to problems that still face them, but a lot of money has been involved already. A lot has been distributed already.
>
> The argument that these people acted humanly because they wanted the money and, therefore, the Federal Government is obliged somehow to extend further money to assist them in their problems does depart from the normal principle that when people exercise their judgment and take advantage of their rights they have to live with their decisions.[101]

Proxmire urged that termination take effect only on a tribal basis. "Termination will thus have taken place, in effect, but the tribe can be reassured that in the event that serious shortcomings in the present plans become evident, they will not be left to flounder into eventual bankruptcy." [102]

"Termination," replied Senator Anderson, "is a single term * * * I am sure termination means termination and not continuance." "An end is an end is an end, added Senator Church.[103]

The Menominee hearing found the Interior Department in a state of transition between administrations. Middle-ranked officials still remained in office, but a new Assistant Secretary represented the Department at the hearing. His presentation was indecisive and hesitant.

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[96] Ibid., p. 10.
[97] Ibid., pp. 10–11.
[98] Ibid., p. 13.
[99] Ibid., p. 14.
[100] Ibid., p. 15.
[101] Ibid., p. 16.
[102] Ibid., p. 17.
[103] Ibid.

The Menominee situation, he said, "is one of the stickiest problems which faces this committee and the Bureau." [104] He referred to tribal opposition to the legislation. "I am told," he added, "that the State of Wisconsin, although willing to cooperate, expressed itself by unanimous legislative resolutions in opposition to the principle." [105] The legislative history since the original act has been equivocal in that extension followed extension." [106]

The Department opposed any loan or subsidy grant to the tribe after termination, fearing establishment of a precedent of Federal responsibility for Indians outside the Bureau's trust jurisdiction.[107] Assistance was necessary. The only practical alternative, the Assistant Secretary concluded, was a "phased extension." I must say that the Department's report on that, equivocal as it may seem, represents what we consider the most logical alternative if the Congress should determine there is still a Federal responsibility for service or assistance to the Menominees. I could not promise * * * that whatever date you fix the situation will be materially better or, indeed, any better at all. * * * We will be prisoners of the lumber market, we will be the prisoners of continued opposition to the concepts of termination, itself." [108] The subcommittee saw the proposal as simply a new guise for another postponement.

The feasibility of the tribal plan for establishing a new county became a central issue of the hearing. A bureau official reported that the State action authorizing establishment of the county was based upon a projected county budget of $375,000. By 1961, however, estimates had risen to almost $600,000, far more than the tribe could afford.[109]

Senator Anderson claimed that if the property were turned over to a management trustee, the tribe could save over 90 percent of this expense, making only small payments to the existing county.[110] "All I am trying to do," he said, "is to try to save this $600,000 a year which is a millstone that is going to hang around these people's necks. * * * There isn't any importance of setting up a job where somebody is county assessor and has 10 deputies. You have a forest there which you handle on a wholly different basis. * * *" [111] "Isn't this the chief weakness of our situation," Senator Church asked, "that we are attempting to establish a novelty, a freak, and then we are trying to figure out how we are going to make it work? If that is the case, before we get to that point why don't we set the freak aside. * * *" [112]

"It seems to me," interjected Representative Laird, "that we are getting off on a tangent of $600,000 as the cost of a county. That is the total cost. Those costs would be carried by some unit of Government whether you set a separate county up or not." [113] Unsatisfied, Senator

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[104] Ibid., p. 29.
[105] Ibid.
[106] Ibid., p. 33.
[107] Ibid., p. 35.
[108] Ibid., p. 36.
[109] Ibid., p. 41.
[110] Ibid.
[111] Ibid., p. 43.
[112] Ibid., pp. 44-45.
[113] Ibid., p. 46.

Anderson asked Laird whether the tribe couldn't save hundreds of thousands in yearly taxes by entering their timberlands under the State forest crop law which provides a low rate of taxation for sustained-yield forests. "On the yield," answered Laird, "if you put all that timber under the forest crop law, there wouldn't be any possibility of running a county government." [114] "I am not anxious to get a possibility of running a county government," Anderson shot back. "That is the last thing I want. That is expensive." [115]

"Then the load would all go on the other counties," Laird argued," and they would, in turn, have to go to the State or somewhere to make up this difference." "That," Anderson replied, "leaves me very cold. * * *" [116]

The question of county government was raised again and again in the course of the hearings. In an exchange with Wisconsin's Attorney General Reynolds, Senator Anderson was highly critical of the State's unwillingness to subsidize the new county. "You say," Anderson argued, "you are not going to turn over to them the courts, the schools, the enforcement of law. You are just going to have a county sitting there and they are going to pay dearly for the privilege of not having the administration of their own affairs." [117]

When pressed on the question of taxation, the Attorney General responded, "* * * the forest crop law would not provide enough revenue to take care of the Indians by themselves. That is the fact. * * * We are trying to make sure that they can live as decent American citizens. One thing is that they have to learn to take care of themselves." [118]

"Do I understand," Anderson asked, "that it is your testimony that the reason you reject the forest crop law is that it doesn't take enough money out of the Indians?" [119] "They have to learn to support themselves," was the only answer.[120] This dialog saw a curious reversal of position, with the State official echoing the belief in the value of self-reliance, and the Senator arguing the case for government assistance to the tribe. The argument continued:

> Mr. Reynolds. The fact is that the care of the Menominee Indians is a responsibility of the Federal Government. * * * Every other witness shied away from this. * * * I believe it is a Federal responsibility.
>
> Senator Anderson. * * * we will treat the Menominees pretty well * * * before we get through with this, but I don't see why, if they started off that they had to have the county, and it bothered Senator Allott and me, and now we get the reason, that it was a revenue-making decision. * * *
>
> Mr. Reynolds. The second point why I don't think the forest crop law would be desirable is that there is no positive assurance under the forest crop law of Wisconsin that the forest would be operated on a sustained yield basis. One of

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[114] Ibid., p. 47.
[115] Ibid., p. 47.
[116] Ibid.
[117] Ibid., p. 91.
[118] Ibid., p. 97.
[119] Ibid.
[120] Ibid., p. 97.

> the basic reasons that we went along with the * * * plan of this law firm, is that regardless of what happens, so far as the business is concerned, there will always be a forest up there, natural resources will always be there under our law.[121]

The deep suspicion which the subcommittee exhibited toward the plan for Menominee County was again evident in the discussion of the complex plan of business organization. The tribal attorney, Frederick Sammond, was closely questioned by Senator Anderson. In response to a question, he admitted that the plan gave control of the stock of all minors and incompetents to the First Wisconsin Trust Co., and that this would amount to more than one-third of the total stock.

"Theoretically then," asked Senator Burdick, "the trust company could control the voting trust in 4 years? It could theoretically," answered Sammond, "yes, sir. That has been thoroughly discussed by both the State and the Indians. * * * Everyone in the picture, I can assure you * * * have been anxious to help the Indians not to scheme for control. The trust company does not want control. They have told me so." [122]

Mr. Sammond offered similarly convincing reassurances regarding the tribe's future. Although Senator Proxmire and the Interior Department had contended that the sawmill would not generate sufficient income to support county government, the tribe's attorney was more optimistic. He predicted a rapid increase in earnings:

> (It will be) the difference between private enterprise and a bureau running it. * * * And because for 3 years the whole operation has been paralyzed by indecision and knowledge that within a short time there would be a complete turnover of management. The maintenance is down. The inventory is up. There has been more or less paralysis. * * * Finally, I don't think the manager has done a good job in the last couple of years.[123]

The tribal budget assumed that the timber cut and lumber sales would increase by 50 percent. The tribal chairman testified that fulfillment of this forecast was very unlikely. "The lumber business," he said, "has dropped in the Nation about 15 percent. However, at the Menominee it has dropped 50 percent. So we have a condition where we have a big inventory, probably about three times as much as any of our neighboring mills carry, and we also have a big inventory of logs and so forth. We are in a position where we have to curtail our business. * * * Our statement shows that in the past 4 months we actually had a loss in net profit." [124]

The new corporation faced problems of staggering proportions. The success of the operation was seriously threatened by the need to immediately provide sufficient revenues to operate the local government and to make necessary improvements. To help meet this problem, a program of subsidies for the transition period was proposed. This was the one provision which received some sympathetic attention from the subcommittee. "* * * it seems to me," said Senator Church, "that as part of the act of termination the Congress can take into consideration special problems that these Indians affected may be faced with, and could wrap into the package either grants or loans to solve these problems." [125]

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[121] Ibid., pp. 97-98.
[122] Ibid., p. 61.
[123] Ibid., p. 62.
[124] Ibid., p. 113.

The State government supported the subsidy proposal. The subcommittee heard an analysis of the unforeseen expenses confronting the tribe. A sharp increase in tuberculosis patients would cost $56,000, while unemployment caused by the slumping lumber market would relieve expenditures by $40,000. Medical care would total at least $108,000, and $438,000 was required for needed improvements for the sewer and water systems. When all needs were totaled it was calculated that the tribe would require $521,000 in Federal assistance during the first year. The program would then extend over a 5-year period, with Federal assistance declining 20 percent each year. These grants were requested in addition to the $2.5 million loan fund.

Calling the reservation a "depressed area", Attorney General Reynolds argued for the plan. He said that "by changing the political structure of the tribe * * * I do not think it is going to have an effect of all of a sudden making them extremely wealthy overnight. So, whether you have termination or not, I think you have to—I think the Federal Government will have to—help them out in some of these programs * * *." [126]

The subcommittee had no use for the loan program. "Do you think," asked Senator Anderson, "that the figure of $2.5 million is anything but sort of a blue-sky figure? Why couldn't it just as well have been $5 million or $500 million?" [127] Anderson was also critical of the subsidies. "Why do you come back in and say this has to be done by a special grant to these Indians," he asked, "when it is not a bit different from anything else the State of Wisconsin has. * * * A man was speaking on the steps of the Capitol some time ago and he said—'America should not ask what the Government can do for them but what they can do for themselves.' " [128]

The hearings ended on an inconclusive note. The Senate subcommittee had clearly identified and carefully probed some of the most serious problems in the termination plan. Testimony had suggested serious inadequacies in the plan for county government and serious dangers to tribal assets in the business plan. Most witnesses had expressed grave doubts regarding the ability of the sawmill to support local government, or to compete successfully without extensive modernization. Although subcommittee members had made several offhand suggestions for radical changes in the Termination Act, in the end no action was taken to meet any of the problems which had been identified.

The face-saving guise of the "phased extension" was rejected, and no further extension was granted. The subcommittee refused to authorize a loan fund for capital development. On the third issue, that of temporary subsidies, the subcommittee agreed to provide limited assistance to smooth over some of the immediate difficulties.

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[125] Ibid., pp 78–83.
[126] Ibid., p. 103.
[127] Ibid., p. 103.
[128] Ibid., p. 82.

With Senate action complete, Representative Laird made a final effort in the House. He urged adoption of the House Interior Committee bill authorizing the loan program, a grant for sewer construction, and a 6-year program of "health, welfare, and education aids in the amount of $1,674,000.[129] "I urge," he said, "as the climax of my 9-year struggle to achieve fair and equitable treatment for the Menominee Indians, that the House adopt the bill reported by our committee. * * * To do otherwise, I submit, would constitute a grave injustice, a slap at a dedicated and burdened committee, and constitute another inequity for the Menominee Indian Tribe."[130]

The bill passed the House. Once again, a conference committee was appointed. Eventually the Senate conferees agreed to the grants for education and sewer facilities, but they rejected the allowances for health and welfare costs. The loan program was defeated. Action by Congress was now complete. The Menominee Tribe had been freed of Federal supervision. No more would the time of Congress be taken up with the concerns of the small Wisconsin community.

CHAPTER 3—THE RESPONSE OF THE TRIBE

> "This Administration, as you know, has pledged itself to consult with the Indian people of this country and to give them every opportunity for a full expression of their desires, suggestions, hopes, and aspirations * * *."
>
> DWIGHT D. EISENHOWER,
> *September 2, 1953.*

Approaching Menominee County from the north, one suddenly leaves the dull stretching miles of cutover farmland and penetrates a dense hardwood forest, rising abruptly straight along the county line. The curt transition symbolizes the discontinuities between the surrounding people and the members of the tribe. Just a few miles further down the road, in the heart of the Menominee forest, is the settlement of Zoar. In this small group of rundown houses live people still practicing the ancient tribal religion, and possessing only a slight awareness of the world outside.

A few minutes further along the road is Neopit, the largest Menominee settlement, with several hundred families. The town is physically and economically dominated by the sawmill on the West Branch River. "Neopit is a typical mill town, except for certain higher status neighborhood areas, with white frame buildings of uniform structure, some black-topped and some unsurfaced streets, and a general air of somewhat ramshackle temporariness. Dogs and children roam the trash-littered streets of the poorer areas nearest the mill and lumber yards."[1]

It is an 11-mile trip from Neopit to Keshena, the pleasant village which serves as county seat of the new county and the place of residence of its more substantial citizens. This small town lies just outside the forest lands, and seems much like any other northern Wisconsin community. Attractive frame homes line the road. In the center of town there is a small business district of grocery stores, tourist spots, a motel, and an office advertising Menominee real estate.

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[129] Laird, "Plea for Justice."

[130] Ibid.

[1] George D. Spindler, *Sociocultural and Psychological Processes in Menominee Acculturation* (University of California: Publications in Culture and Society, vol. V; Berkeley and Los Angeles: University of California Press, 1955), pp. 49-50.

Historical background.—The people living in these 361 square miles in northwest Wisconsin are the product of a unique history and culture. Louis XIV ruled in France when French missionaries first made contact with the remnant of the tribe, almost wiped out by war, living in a small village. The tribe was weak and disorganized, unable to confidently resist white influence.[2] During the next century the tribe proved very receptive to French and British influence, and were more readily Christianized than any other tribe in the region.[3] One study concludes that "the psychological attitudes created during this time, strengthened as they were to be by centuries more of like domination, seem to have had a great deal to do with the fairly smooth submission of the Indian to reservation control. * * *"[4]

The early 1800's saw the first systematic American contact with the tribe. The advent of American power found the Menominees weakened by the loss of their leaders.[5] The tribe quickly shifted its allegiance to the United States. The rapid growth of Federal power in tribal affairs is illustrated by the fact that a longstanding dispute over the succession of a new chief was finally settled in 1827 by a committee appointed by the President.[6]

The U.S. Government soon began an attempt to radically change tribal life. The official attitude was reflected in the words of a Government commissioner who visited the tribe in 1820:

> I stated to them the design of the Government concerning the Indians viz to teach them agriculture and the arts, to dress and live like the white people, et cetera.[7]

American officials ended the policy of "rather haphazard paternalistic and personal relations" which had prevailed and began a "system of institutionalized control."[8]

The Menominees acceded to a series of five treaties between 1831 and 1856, giving up large portions of Wisconsin territory for small payments and a guarantee to reserved lands.[9] In 1854, the tribe moved to the reservation area and took possession of their land.

The early period of reservation life was one of great hardship for the tribe. The area around the reservation was settled, and the tribe was forced to end a traditional dependence upon hunting. Some members attempted to farm the unproductive land. In 1863, the Indian Commissioner reported "almost hopeless poverty." "It is difficult," he wrote, "to conceive of locations more illy adapted to the support and wants of a people but little acquainted with the arts of civilization. * * *[10]

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[2] Felix M. Keesing, *The Menomini Indian of Wisconsin*, ("Memoirs of the American Philosophical Society," vol. X. Philadelphia: American Philosophical Society, 1939), p. 15.

[3] Menominee Indian Centennial Committee, *Menominee Indian Centennial, 1854–1954* (Shawano, Wis.: Menominee Tribe, 1954), p. 15.

[4] Keesing, p. 83.

[5] Keesing, p. 97.

[6] Ibid., p. 98.

[7] Menominee Indian Centennial Committee, p. 37.

[8] Keesing, p. 100.

[9] Centennial Committee, pp. 41–47.

[10] Keesing, p. 159.

Hostility and agitation against the treaties grew during this period. The tribe brought charges against three consecutive Indian agents. After investigation, the Government found it necessary to dismiss each of these men.[11]

After a lengthy and futile attempt to turn the Menominees into small farmers, Government policy gradually turned toward the exploitation of the rich timber resources of the reservation. A lumber camp was organized in 1872, using only tribal labor. The tribal economy was greatly strengthened.[12]

In the following years the tribe was strongly pressured to sell or distribute their forest lands. Twice logging operations were stopped. Congress authorized the tribe to sell its forest, but tribal leaders refused.[13] Similarly, the tribe withstood the pressure to divide its land under the General Allotment Act of 1887. A strong suspicion of the lumber interests, the notorious "pine ring," lasted even to the time of the termination legislation.

The Government followed a policy of destroying existing tribal leadership. The tribal chiefs were taken to Washington in 1890 and persuaded to surrender their titles in exchange for appointments as tribal judges. After the old chief died, officials were thus free to appoint the most cooperative tribal members to the positions of authority.[14] "More and more the traditional leadership was undermined and the function of the council circumscribed. In their place the Government built up a system of direct and paternalistic relationships between itself and the individual Menominee. * * *[15] One fruit of this policy was evident in the early 1900's when an attempt to set up a tribal business committee failed because of the alleged "crookedness" of its members.[16] Accustomed to dependence upon Government officials and without a tradition of self-government, the Menominees were unable to provide their own leadership and unwilling to trust one another.

In 1908 a major step was taken to assure the economic future of the tribe. Senator LaFollette sponsored legislation which placed the tribal forest on a permanent sustained-yield basis. The Forest Service was directed to supervise the harvest of "fully matured and ripened green timber," and strict limitations were set on the annual timber cut.[17]

Indian Service management of the timber operation was sharply criticized, and the demand for self-government arose again in the twenties. Petition and resolutions were submitted, and delegations were sent to Washington. Finally, in 1928, an elected advisory council was established with the power to make recommendations on behalf of the tribe.[18] The constitution established then was to last, with few modifications, to the end of the tribe's legal existence.

The background of the tribal government and the nature of its organization strongly influenced the quality of its response to termination. The history of the Menominees shows many parallels to that of colonial peoples, and it may be well to consider some aspects of the Menominee experience in terms of this analogy. In contemporary discussion of the "emerging nations" it is often contended that many new nations are not prepared for democratic government or for self-government in any form. Some of the major social prerequisites which have been suggested as necessary preconditions for democracy are: The existence of some tradition of self-government, a high level of literacy and widespread education, a large middle class, the availability of a native leadership possessing the necessary skills to successfully operate the political institutions, and the existence of a concensus of fundamental social aims. The Menominee Tribe satisfied none of these criteria in 1928, and only in the field of education had any real progress been made by 1954.

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[11] Ibid, p. 16Y7.
[12] Centennial Committee, p. 55.
[13] Ibid., pp. 55–57.
[14] Keesing, pp. 192–193.
[15] Ibid., p. 193.
[16] Ibid., p. 237.
[17] Chapman, p. 2.
[18] Rachel Reese Sady, "The Menominee: Transition from Trusteeship," *Human Organization,* VI (spring, 1947) p. 4.

Tribal government.—"Self-government" in the form of a mechanism for making suggestions to the Indian Bureau began in 1928. The tribe's constitution established two basic political organs. The general council, comprised of all adult Menominees, met at least twice a year. The 12-member advisory council was elected by the tribe, and it held governing authority between general council sessions.[19]

The tribal constitution vested final authority in the general council. Any important tribal decision required general council action and, not infrequently, advisory council decisions were reversed. During the crucial period surrounding the enactment of the termination law, more than 20 percent of advisory council resolutions met defeat in the general council.[20]

Tribal members were overwhelmingly apathetic toward tribal government. They were suspicious of the leaders and easily swayed by popular opponents. The successful functioning of the general council was seriously impaired by the difficulty in obtaining a quorum for meetings. During the 28-month period surrounding the enactment of the termination legislation, for example, 13 general council meetings were called. Although the issues were of decisive importance and free transportation and meals were offered, fewer than half the meetings produced the required quorum of 75 adults.[21]

Only when matters of immediate personal concern were under consideration did the attendance rise much above the necessary 5 percent of tribal members. On these occasions, the people were sometimes unable to deny themselves immediate benefits, even at the expense of the tribe's long-term interest. The problems created by the legal supremacy of the general council were most clearly evident when the members rejected the advice of the tribal attorney and the advisory council decision and voted themselves larger payments from the income of the timber industry. This destructively shortsighted decision cut deeply into the capital needed for the sawmill enterprise.

Menominee politics showed an enduring pattern. In more than 30 years of limited self-government, a series of observers reported a basic continuity in the functioning of reservation politics.[22] An anthropologist living on the reservations comments:

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[19] "County and Local Government on the Menominee Indian Reservation" (Bureau of Government, University Extension Division, University of Wisconsin, Oct. 1, 1956) pp. 13–15 (mimeographed).

[20] Ibid., p. 15.

[21] Ibid.

> The political stew on the reservation is always bubbling. Agents, advisory boards, factions, and "behind the scenes" leaders come and go. Issues on almost every aspect of administration, particularly those concerned with the budget, are continually being raised as the Menominee face the difficult problems of semi-independent status.[23]
>
> The radical element * * * seems to be a reservoir of dissatisfaction and easily manipulated sentiment that can be used by any aggressive leadership in the struggle for power * * *.
>
> In political action, therefore, a large part of the present Menominee population resembles a "mass." It is easily led and manipulated * * * they seem ready to attach themselves to a new leader who can capitalize upon hostility that is vaguely directed against * * * "government" * * *.[24]

The general council system encouraged leaders to seek popularity rather than to support sound political policy. Tribal leaders showed little willingness to oppose a detrimental but popular measure. Leadership lacking courage and information, seeking only approval, proved a major source of difficulty to the tribe. Leaders were quite willing to play upon fears and antagonisms between factions in order to advance themselves. Reservation politics was an intensely personal politics. "Factions attack personalities on the advisory council, and programs discussed by that body are rarely the subject of tribal attention * * *."[25] Criticism was intense and was commonly directed at anyone who attempted to lead. Tribal officials were a constant target for bitterness and social reprisal.[26]

The personal inadequacies of Menominee leaders do not suffice to explain the weakness of the tribal government. The possibilities for leadership were conditioned both by the structure of the political institutions and by the traditions of the community; these possibilities were further bounded by the nature of the underlying social groupings which constituted the community. The Menominee people were deeply divided, and those divisions created competition, criticism, suspicion, and continual struggle against those in authority.

General council sessions often provided a platform for factional infighting. There were "fights just for the purpose of disagreement," claims a former tribal chairman. "The tribe refused to respect the ideas of experienced leaders. There was immediate distrust of leaders."[27] A member of an opposing group gives quite a different story: "Whenever you tried to say anything, they always would call 'Out of order.' 'It isn't on the agenda.' "[28]

It was to the general council that Senator Watkins brought the issue of termination of June 1953. It was 2 years since the tribe had won its case against the Government in the Court of Claims. In 1952, the council had supported a program providing that the funds be spent for the industry and for a $1,000 per capita payment. The request had been rejected by the Indian Bureau, and the council sent a new delegation to Washington in 1953. The new bill was accepted by the House but blocked by Senator Watkins. The Senator's visit to the reservation was to bring perhaps the most crucial decision in Menominee history.

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[22] See, for example, the following: Spindler, Keesing (book cited above and also an unpublished paper cited in Spindler, p. 243), Sady, Maurice Karlen Townsend, "The Rehabilitation of the American Indian under the Indian Reorganization Act" (unpublished master's dissertation, Department of Political Science, University of Chicago, 1959), and Robert B. Edgerton, "Menominee Termination: Observations on the End of a Tribe," Human Organization, XXI (spring 1962), pp. 10–16.

[23] Spindler, "Sociocultural and Psychological Processes * * *", p. 54.

[24] Ibid., p. 56.

[25] Townsend, p. 25.

[26] Ibid., pp. 146–147.

[27] Interview with James Frechette, July 16, 1964.

[28] Interview with Mary Blumrick, July 18, 1964.

An impasse had been reached in Washington negotiations, and the tribal delegation asked Watkins to visit the reservation. Watkins was the only member of either subcommittee who could find time for the trip.[29] After a short stay on the reservation, he spoke to the general council the morning of June 20. After talking for about 45 minutes and answering several questions, he was forced to leave to make other commitments.[30]

Senator Watkins told the tribe that Congress had already decided upon termination. "Congress desires that you should manage your own affairs," he said, "and wants you to take over in 3 or 4 years."[31] "I would be willing to (agree to) a 3-year program with the condition that it means action at the end of it * * * there must be some day when the property will be turned over to you."[32] Only with termination, Watkins said, would per capita payments be made.

The Senator's speech made the desired impression. Later in the day, the general council voted 169 to 5 in favor of a resolution accepting the principle of withdrawal. No effort was made to call a tribal referendum on the issue.[33] Looking back, one Menominee says that tribal members "were like children" when confronted with the temptation of the payment.[34] No one in the tribe had any idea of the ultimate implications of termination. Few could resist the change for immediate assistance.

Tribal leaders believed that they had met Senator Watkin's demands, and the tribal attorney drafted a termination bill. The Bureau of Indian Affairs greatly modified the tribal draft, and the advisory council rejected the amended bill. Senator Watkins was unwilling to compromise. He told the delegates that he "wanted this legislation wrapped up during the present administration of President Eisenhower."[35]

The legislation was under consideration in Congress. On the reservation, a hurried, informal meeting of tribal members was called. The members present voted 197 to 0 to oppose the bill, showing their willingness to forgo the payments in order to prevent termination.[36] In spite of the vote, however, Watkins succeeded in gaining Senate passage of the bill.

Although the bill was defeated in the House, tribal leaders realized that Watkins would make another attempt the following session. In late September the tribe appointed a planning committee to draft acceptable legislation and to prepare the tribe's presentation for the congressional hearing.[37]

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[29] Joint hearings, p. 597.
[30] Ibid., p. 700.
[31] Ibid., p. 708.
[32] Ibid., p. 709.
[33] David W. Ames and Burton R. Fisher, "The Menominee Termination Crisis: Barriers in the way of a Rapid Cultural Transition", Human Organization, XVLLL, October 1959, p. 102.
[34] Interview with Lester Dickie, July 16, 1964.
[35] Joint hearings, p. 700.
[36] Ibid., pp. 700–701.

Tribal leaders were scared. The fear of the Senate subcommittee is reflected in a story which one delegate tells about the anger of Senator Watkins following the 1953 defeat of the Menominee bill in the House. Riding in a Senate elevator, a tribal delegate overheard Watkins assert that, "The damn Menominees are not going to get a damn cent from me until the legislation is passed." [38] Another delegate remembers that Watkins even threatened to cut off interest payments on the tribe's funds in the Treasury. None of the leaders appear to have a clear understanding of the functioning of Congress, and there seems to have been a general assumption that the power of the subcommittee chairman to veto legislation was matched by an equal power to pass virtually any legislation he wanted.

In the hearings before the joint subcommittee the tribal delegates did not argue against the termination policy. Accepting termination as inevitable, they requested sufficient time to allow necessary preparation. The delegates pictured the tribe as responsibly accepting the policy, and they promised to work for successful implementation. "All we ask," said the tribal chairman, "is sufficient time to accomplish our end of the bargain. Time is essential; withdrawal must be orderly, or we will face liquidation * * *." [39] Since the tribe was little burden on the Government, and since they had worked hard to plan for termination, he felt that adequate time should be granted.[40] Another delegate told of the difficult research which confronted the tribe and described the "gigantic problem of educating as many members * * * as possible as to what it means to have the Federal Government step out of the picture." [41]

The delegates were most worried about the possible impact of termination on the reservation's one significant business—the Menominee Indian Mill. One delegate testified that county taxes could exceed the total tribal income. After Federal protections were removed, the tribe feared that it would be necessary to cut employment levels in order to pay taxes and meet competition prices.[42] The delegates presented some plans for industrial diversification, but later experience was to demonstate that it was far easier to conceive such projects than to bring them to fulfillment.

Future local government for the tribe was a troublesome issue, both in financial and political terms. Integration with the largest adjoining county would give the tribe a big tax burden but little political power. "We might, at the most," a delegate said, "have one or two representatives on the county board as against some 38 representatives from Shawano County proper. And those figures certainly demonstrate who should be running the show." [43]

In the 3 days of hearings, only the tribal attorney raised the basic question of the right of Congress to pass such legislation:

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[37] Ibid., p. 701.

[38] This information was received on the condition that the informant's name not be used. Future quotations which are not footnoted represent material which was not given for attribution.

[39] Joint hearings, p. 741.

[40] Ibid., p. 742.

[41] Ibid., p. 747.

[42] Ibid., p. 674.

[43] Ibid., p. 729.

> When the Congress passes legislation which transfers that legal title from the United States to the tribe * * * that property becomes subject to taxation. I cannot escape the conclusion that amounts to an amendment or abrogation of the treaty which in turn constitutes a contract between the Menominee Indian Tribe and the U.S. Government.[44]

In compensation, he suggested that the Government pay the tribe's taxes for several years. The suggestion died without comment.[45]

Congressional action was rapidly completed, and the tribe was set on the road to termination. On June 17, President Eisenhower signed the Menominee Termination Act before a smiling assemblage of legislators, Interior Department officials, and tribal delegates. The President welcomed the enactment of the bill.

> The Menominees have already demonstrated that they are able to manage their assets without supervision and take their place on an equal footing with other citizens of Wisconsin and the Nation. I extend my warmest commendations to the members of the tribe for the impressive progress they have achieved and for the cooperation they have given the Congress in the development of this legislation. In a real sense, they have opened up a new era in Indian affairs—an era of growing self-reliance which is the logical culmination and fulfillment of more thna a hundred years of activity by the Federal Government among the Indian people.[46]

On the reservation, however, there were few smiles. Most of the people were angry and afraid. An anthropologist who lived on the reservation shortly after the enactment of the law reported wide antagonism toward Senator Watkins and the Indian Bureau.[47] One tribal member commented:

> I'll tell you what I think: Senator Watkins when he came here dangled that money in front of us like a bone in front of a dog. You know there were only two people who spoke up against it at the council meeting * * *. They said, "You can keep your money and I'll keep the reservation." A lot of people feel that way now.[48]

People feared the loss of their property through taxation and the possibility of tribal bankruptcy. They were worried about the short time allowed for preparation and the difficult adjustments which confronted the old people. Many were concerned about the bitter divisions already existing within the tribe.[49] "I hope I'm dead before termination comes," said one Menominee. "I have thought about giving my daughters and granddaughters sleeping pills." "I don't know how we'll make it," another commented, "I lay awake nights worrying about it."[50]

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[44] Ibid., p. 705.

[45] Ibid., p. 697.

[46] Centennial Committee, p. 79.

[47] David Ames, "Report," paper submitted to the Wisconsin Legislative Council. (Microfilm copy in the files of the Wisconsin Historical Society, undated.)

[48] Ibid., p. 4.

[49] Ibid., pp. 6–11.

[50] Ames and Fisher, p. 103.

Tribal members tried to understand why the Termination Act had been passed. Some simply felt that the tribe had been "betrayed." "The white man did not live up to his treaties," said one man, "they took most of our land from us and now they want to take more." [51] Many wondered why termination was necessary when the tribe had been functioning successfully and paying its own bills.[52]

Thus, there existed the anomolous situation of a community very deeply disturbed about a policy which was publicly endorsed by their "leaders." This is a contradiction rooted in the deep social divisions among the Menominee people, divisions which were to become increasingly pronounced under the strains of termination.

Society and Culture.—Social divisions on the reservation were obvious and freely acknowledged by tribal members. A number of anthropological and sociological studies made of the tribe in recent years have yielded remarkably consistent findings. The most careful student of contemporary Menominee culture defines five fairly distinct cultural groups ranging from a small "Native-oriented" group practicing ancient ceremonies and retaining much of traditional Menominee culture to a small elite accepting American middle-class values.[53]

The three least-acculturated groups made up a small minority of the population. They generally live apart and seldom play an active role in community life and political decisionmaking. For practical purposes there are two basic social groups on the reservation. An "upper crust" elite group "approximates the white middle class in its material culture, behavior, and values." [54] A larger laboring class shares white values, at least in a superficial sense.[55] Material status symbols are much the same as in a typical American community.[56]

In the more subtle aspects of culture, however, the effects of a hundred years of reservation life become evident. The members of the tribal laboring class have not been forced to develop self-reliance and responsibility. "They look for work after they have put the last stick in the stove, believing that when their money runs out, 'someone'—the Agency, tribe, or the county—will take care of them." [57]

At the pinnacle of reservation society was a group of Menominees holding management jobs in the lumber industry. Psychological techniques demonstrated that the members of this group has achieved "reformation of personality in successful adaptation to the demands of status achievement, punctuality, and the linkage of work and success appropriate to the middle-class American value system." [58] These men took the leadership in community activities and in reservation politics. Their families formed a closely knit social group.[59]

The underlying social and cultural divisions become politically relevant as factions in reservation politics. Cleavages in the tribe are along a number of lines: fullbloods against the halfbreeds, Catholics against non-Christians, the elite against the "have-nots" and a variety of divisions focused around personalities of leaders.[60] The anxieties and pressures of the termination process intensified the battles to the point where many people did not believe the tribe could hold together.[61]

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[51] Ibid.

[52] Ibid.

[53] Spindler, Sociocultural and Psychological Processes * * *, p. 1.

[54] Ames and Fisher, p. 105.

[55] Ibid.

[56] Louise S. Spindler, Menominee Women and Culture Change ("The American Anthropological Association: Memoir 91, vol. LXIV, No. 1, pt. 2, February 1962), p. 7.

[57] Ames and Fisher, p. 105.

[58] George D. Spindler and Louise S. Spindler, "American Indian Personality Types and Their Sociocultural Roots," Annals of the America Academy of Political and Social Science, CCCXI (May 1957), p. 152.

[59] Spindler, Sociocultural * * *, pp. 99–100.

> For example, the so-called real Menominees favor a reenrollment "to get rid of those people who don't belong"—by their count, at least half of the currently enrolled members. On the other hand, some of the upper crust of Menominee society * * * would encourage some of the have-nots, many of whom are their political opponents, to sell out their tribal assets, with the proviso that they must never return to the reservation to live.[62]

The Menominee tribal government was a fragile and contrived structure, existing by virtue of public apathy, interfering little in the lives of tribal members, and run by a close-knit clique of a few families. Tribal government did not attempt to identify and resolve community differences, but rather lightly papered over the divisions. The antagonisms were real and important. When the tribal government was suddenly given authority to make decisions of decisive importance to the future of the entire tribe, the existing divisions grew wider and eventually brought tribal planning to a virtual standstill. A governmental structure reasonably adequate for an advisory function lacked the strength necessary for making a series of hard decisions. Termination could not be achieved within the old forms. In the end it was possible to prepare a tribal plan only by bringing in a man not involved in tribal politics to head a new organization. A great many of the decisions were abdicated to this man.

The Menominee people lacked the first requisite for self-government—a fundamental sense of community and a consensus on common ends. "Actually," writes one observer, "it is misleading to talk of 'the tribe' in the sense that 'tribe' connotes to most people a relatively homogeneous and cohesive group * * * with a certain esprit de corps."[63] Within the tribe there were social, economic, and cultural divisions which superseded any sense of tribal unity. Many tribal members were actively hostile toward tribal leaders. These antagonisms were reinforced by the existence of a tribal leadership lacking skills, courage, or a real concern for the advancement of the entire tribe.

The Menominee tribe was unprepared for any form of self-government, but it was particularly unequipped for democratic government. Not only were the people asked to elect tribal officials, but they were also asked to ratify all important decisions. Many have contended that stable democratic government can succeed only among a population with a large middle class free from immediate economic want. The Menominee middle class was a closed corporation of approximately 20 families. The average mill employee earned $2,300 a year, hardly enough to support a large Menominee family.[64] It was unreasonable to expect people who always needed money immediately to defer payments for the benefit of some dimly understood future need of the tribe.

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[60] Ames and Fisher, p. 107.
[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] "County and Local Government, * * *", p. 6.

The Menominee educational level was equal to that of the surrounding Wisconsin counties, but the tribe had a critical lack of specialized skills and training. The average tribal member had finished the eighth grade. The most important education problem was the "complete absence of medical, legal, engineering, and similar professional training".[65] None of the Menominee people possessed the educational background required for the enormously complex and technical job of planning the future (of the future) of the community. The tribe was ill prepared to assume the normal functions of local government, but it was faced with a demand to radically alter the basis of its community organization in a period of four years.

Politics of Termination: 1954–1957.—During the first years of preparation for termination, tribal politics was dominated by an advisory council clique under the leadership of James G. Frechette. Frechette had returned to the reservation during the depression and rapidly became involved in tribal politics. First elected to the council in 1930, he was to serve as its chairman for 13 years.[66] "I think I got into tribal politics," he says, "because I came back and saw the lack of leadership and a need for a lot of improvement."[67] Frechette found a political base in his very large family, and it is asserted that he increased his following through the use of patronage.

The Advisory Council annually elects the tribal chairman from among its members. Frechette was elected the year after passage of the termination act, and held the $6,500 a year job until 1961.[68] During this period he often served as chairman of the annual Menominee Indian Fair and Pageant, he was a member of the Governor's Human Rights Commission, and he was selected to serve on the state's Menominee Indian Study Committee. Mr. Frechette led tribal delegations to Washington and Madison and was frequently called upon by interested white groups to explain the Menominee situation. From the outside, Frechette appeared to be the genuine leader of the Menominee people.

The Advisory Council was responsible for making tribal decisions between the infrequent General Council meetings. Most Advisory Council decisions were accepted by the General Council, and members of the Advisory Council often dominated General Council debates. Tribal government had no administrative structure; when the Bureau began to transfer administrative responsibilities to the tribe the Advisory Council was given control. In 1956, the average Councilman was "43 years old, has served three previous terms, had completed about 2 years of high school, lives in Weopit, and has one of the better jobs at the Menominee Indian Mills."[69] The fact that most of the members held high-level jobs illustrates the existence of an "interlocking directorate" between the Council and the business.

Real power for the Advisory Council dated from the passage of a 1934 act granting the council the right to approve the annual budget for tribal operations.[70] By threatening to exercise this authority, the tribe was able to secure dismissal of government employees with whom they were dissatisfied.[71] Constant pressure was maintained for the replacement of white business officials with Menominees. As the tribal elite gained increasing authority "tribal members, kinship affiliation, and the power to make political trouble became increasingly important criteria in the selection of persons for the top position * * *." [72]

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[65] Ibid.
[66] Milwaukee Journal, Aug. 16, 1964.
[67] Ibid.
[68] "County and Local Government, * * *", p. 17.
[69] Ibid.

Nepotism was common on the reservation. Low level jobs were given to relatives without any real opportunity for open competition. Even when there was nominal competition, the clique of office workers and administrators knew of the openings in advance and prepared relatives to meet the requirements.[73]

To their social dominance and political power, Menominee leaders thus added influence in determining the distribution of job's in the reservation's only industry. The tools seemed available for the construction of a political machine and the enforcement of political conformity. Frequently, in fact, tribal members commented on the fear to speak at meetings or to vote in opposition to tribal officials because of the danger of losing their jobs.

The power of tribal leaders was formidable. It is a commentary on the ineptness and vacillation of the leaders that no unified, purposive political organization was created with these resources. Only rarely and with hesitation did the tribal "leaders" attempt to lead rather than follow public opinion. As the termination process developed, the leaders were caught between the demands of outside officials for tribal action, and the insistence of many tribal members that they were responsible for verything bad about termination.

From the outset, the Bureau of Indian Affairs made clear its intention to hold the tribe responsible both for the necessary research and for the decisions determining the form of organization to be created after termination. Six months after the bill was passed, the Bureau cut its local staff by over 50 percent and began to transfer functions to the Advisory Council.[74]

In the first few months under the new law, the tribe established a new budgetary process, appointed a group to plan welfare administration, and assumed control of the law enforcement operation.[75] Leaders lacked tools to attack the much larger problems confronting the tribe. The tribe submitted a proposal for assistance under the Adult Education program asserting that the tribe was "confused and bewildered by the magnitude of the problems" and that a broad program of education and research was essential.[76] Some people were anxious to get their share of the tribe's assets immediately through liquidation. Research was requested to identify feasible means for preserving tribal ownership. The tribe's letter also requested "an analysis of municipal, township and county government." [76]

The first steps toward termination were being taken, and a series of studies had been requested. Just 2 months later, however, the tribe made a decision multiplying the difficulties of termination planning.

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[70] Sady, p. 6.
[71] Ibid., p. 12.
[72] Ames and Fisher, p. 108.
[73] Ames, p. 24.
[74] Menominees News, Jan. 27, 1955, p. 1.
[75] Ibid.
[76] Menominee News, Feb. 25, 1955, pp. 4–5.

In 1934 Congress had established a procedure for distribution to the tribe of the annual profits of the lumber business. In 1955 it was discovered that the Bureau of Indian Affairs had misinterpreted this law and failed to distribute the required amounts during a period of several years. The Menominee General Council passed a resolution requesting distribution of the $2.5 million due the tribe in past payments and also of some $1.6 million to $4 million from tribal funds would leave the tribe with a dangerously small reserve for its timber operations.[77]

Mr. Frechette had been informed of the mistake almost a month before the General Council meeting. The Advisory Council then considered the matter and recommended that the tribe limit payments to $400 per capita, a total of approximately a million dollars. The Advisory Council position was supported by the mill manager and the tribe's lawyers. A number of information meetings were held on the reservation to explain the issue to the people. At the General Council meeting, Frechette argued that a reserve fund for the timber operation was essential. His opponent answered, "We didn't make the mistake, Uncle Sam did." [78] With just over a hundred members present, the Council gave a 30-vote majority to the proposal for full payment of all the money due.[79]

In the following weeks the tribe heard dire warnings from the chairman of the Advisory Council, from the reservation superintendent, and from the Commissioner of Indian Affairs. In an open letter to the Menominees, Commissioner Emmons said that it was "unfortunate that those present gambled so dangerously with the future of the tribe for the sake of an additional few hundred dollars." He pointed out that attendance at the meeting had been only 6 percent of tribal membership, and suggested reconsideration. He offered the services of the Bureau staff to inform the people and conduct a referendum. [80] After long debate the Advisory Council accepted the recommendation and drew up a ballot listing various alternatives.[81] The decision of the General Council was upheld by the referendum.

In May, 1955, the tribal chairman made a gloomy report on tribal finances. "It will be up to the people," he wrote, "to decide just what services they wish to go without. . . . To ask the people to pay hospital expenses, school expenses, from their individual earnings, means only one thing—that in the future, many of our people will have to go without these services." [82] Unless a change was made, he said, the tribe would be bankrupt by 1957.[83]

Many blamed the tribe for the "dissipation" of its funds. Certainly tribal members must bear a portion of the blame. On the other hand, however, the money was rightfully the property of the preceding 10 years by a "misinterpretation" of the law. The mistake was "Uncle Sam's".

The decision illustrated the structural inadequacy of the Menominee government for a period of extremely painful transition. The decision had not been left to the relatively experienced lay leaders on the advisory council who possessed some understanding of the gravity of the issue: it was rather made by a small group of the general population, possessing no understanding of complex economic issues. People always in need of money were given a chance to obtain immediately $700 for each member of their family. These were people with no notion of saving money for deferred consumption, who felt that "money is meant to be spent now for a good time." [84]

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[77] Menominee News, Apr. 8, 1955, p. 1.
[78] Ibid., pp. 2–3.
[79] Ibid.
[80] Menominee News, Apr. 19, 1955, p. 8.
[81] Ibid., pp 8–9.
[82] Menominee News, May 13, 1955, p. 2.
[83] Ibid.

In the days of little real responsibility and routine decisions, the general council was a useful check on the machinations of a clique of tribal politicians controlling the advisory council. It was wholly deficient, however, for making the basic decisions now before the tribe. The general council system left leaders advocating sacrifices for the tribe's future at a great disadvantage relative to those urging immediate satisfaction. The Menominees urgently needed a responsible representative government, but they had to make do with a system based on the least common denominator of understanding.

Tribal studies went forward at a slow pace. A year after enactment of the termination bill, committees had been established to study land use, welfare, and governmental reorganization, but little had resulted from the meetings. The Termination Act gave the tribe the responsibility for meeting the expenses of termination planning. With a depleted treasury and widespread hostility toward termination, it was difficult to obtain even a few thousand dollars to pay the tribe's contribution to a series of studies to be conducted by the University of Wisconsin. The Bureau provided very little assistance, and the university studies did not prove fully satisfactory. "In evaluating the studies," Frechette wrote in late 1955, "* * * we come to the conclusion that in some fields of research, the university may * * * be limited either in personnel available or research materials, that would make it necessary for us to seek this information in specialized fields * * *." [85] However, no other research organization was employed.

Administrative responsibilities in several areas were transferred from the Bureau to the advisory council. In January 1955 a new system of law and order was established. By November, the superintendent was able to report:

> The tribe has set up a tribal treasurer * * * and the advisory council has taken over the management of the business of running the hospital and clinics, schools, welfare assistance, law and order * * * and all other tribal enterprises and projects. The Agency turned over to the advisory council and the tribal treasurer all funds necessary * * * All decisions and management is now being provided by the advisory council * * *. [86]

In late 1955 the advisory council demonstrated its determination to tighten the extremely permissive employment practices of the timber mill. After the 1954 per capita payment, mass absenteeism forced a shutdown of the mill, and failure to fulfill contracts resulted in cancellations of orders. When absenteeism began to rise before the $700 payment, the advisory council took the extraordinary step of authorizing guarantee of work to non-Indians. This threat to their jobs kept Menominees at work.[87]

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[84] Ames and Fisher, p. 106.

[85] Menominee News, Dec. 16, 1955, p. 1.

[86] Menominee News, Nov. 22, 1955, p. 1.

Judged in the perspective of its past history, the progress of the tribe was very rapid; but judged against the demands of the termination legislation, only a beginning had been made. Already, the thoughts of tribal leaders were turning to the possibility of extending the deadline. These hopes were strengthened by the cooperative attitude of Representative Reuss, of Milwaukee. Mr. Frechette strongly supported Reuss' plan to extend the termination deadline indefinitely and to provide Federal financing for research and planning.[88] The advisory council unanimously supported the Reuss amendment in January 1956, and the general council followed suit.[89]

The tribe's financial position remained critical. In February 1956, Frechette made a last attempt to amend the earlier general council decision on future payments. He proposed a resolution calling for deposit of future payments in tribal reserve funds:

> *Resolved*, That it is the sentiment of the Menominee Indian Tribe in general council assembled that the advisory council is hereby directed to prepare a suitable plan whereby future dividends from our milling industry can be made to the tribe.
>
> *Resolved further*, That when this plan is formulated, that it be presented to the general council for approval.[90]

After a lengthy discussion, a vote was taken. The resolution lost with 31 voting in favor and 46 opposed.[91]

In spite of this reverse, the advisory council did not turn to opposition to termination. "This tribe does not officially oppose termination * * *," Frechette wrote in March 1956. "Our position * * * is simply this: the tribe is doing whatever it can to meet the mandates of Public Law 399 * * *."[92] Some amendments to the law, however, were absolutely necessary to preserve the future economy of the Menominee Indian Tribe."[93]

In April, the tribal delegates in Washington wrote to the Assistant Secretary of the Interior describing the financial plight of the tribe. "Unless the Wisconsin Legislature is willing to give special tax treatment to the Menominee Forest," they asserted, "it probably will be impossible to continue to maintain the forest on a sustained yield principle. This opinion is shared by the Wisconsin Taxpayers Alliance and a special committee appointed by the Society of American Foresters."[94] Although it had no information to the contrary, the Department rejected this assertion, and the tribe was unable to gain the desired extension. The deadline for submission of the tribal plan was actually moved 1 year earlier.

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[87] Menominee News, Oct. 10, 1955, p. 1.
[88] Menominee News, Sept. 12, 1955, p. 1.
[89] Menominee News, Jan. 20, 1956, p. 11, and Feb. 27, 1956, p. 3.
[90] Menominee News, Feb. 27, 1956, p. 4.
[91] Ibid.
[92] Menominee News, Mar. 23, 1956, p. 11.
[93] Ibid.
[94] Letter from tribal delegation to the Assistant Secretary of the Interior, Apr. 20, 19.

In 1956 little progress was made toward termination. The tribe assumed control of a new credit program, and the advisory council took steps to reduce the budget deficit by cutting certain expenditures and establishing a sewage fee.[95] The inability to hold to the decision for an austerity program was evident, however, in the advisory council meeting of September 11:

> In response to requests contained in a petition signed by 175 tribal members, the council reinstated the dental program which had been deleted from the budget last June as an economy measure. It was argued that the saving of $4,800 * * * would affect the schoolchildren adversely since many tribal officials members lacked funds to get the required services on the outside.

The Neopit Clinic, which also had been deleted from the 1957 budget, was reopened, and the medical services program was revised to conform substantially to that which operated in previous years * * *.[96]

In autumn 1956, the preliminary studies of the university experts were beginning to appear, but it was to be a long time before the tribe would be asked to come to final decisions on the alternatives broadly sketched in these papers. For the present, the urgent necessity was to gain a postponement of the 1957 deadline.

Indian Commissioner Emmons was a guest at the March 1957 meeting of the general council and he witnessed a unanimous vote in support of legislation delaying termination for 2 years. At this point, economic planning had barely begun, because the State valuation of the reservation was still in process.[97] Yet, only 9 months remained before the deadline for submission of the tribal termination plan.

Mr. Frechette wrote to the chairman of the House subcommittee supporting the amendment to the Termination Act. He pointed out that it was impossible to work out plans for a future educational system in the time allowed, and that university reports had not been completed in time either for tribal consideration or for necessary action by the State legislature. It would be "unjust and unwise" to force a decision before the plans could be explained to the tribe. Moreover, it was necessary to hire experts to implement the recommendations.[98]

The House approved the extension measure, but the bill was caught up in a quarrel between the House committee and the chairman of the Senate subcommittee. There was no legislation in 1957.

The Coordinating and Negotiating Committee.—The most significant tribal action of 1957 was the appointment of a tribal committee to undertake further studies and make definite recommendations to the tribe. Advisory council members lacked time to do the necessary research, and it was unlikely that advisory council proposals would receive a favorable hearing. The tribe had demonstrated its regard for the council early in the year when it voted to reduce the rate of pay for councilmen. In November, the general council voted 79 to 0 to establish a coordinating and negotiating committee composed of the tribal chairman and three other Menominees with primary responsibility for termination planning.[99]

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[95] Menominee News, Jan. 28, 1957, p. 1.
[96] Menominee News, Sept. 28, 1956, p. 1.
[97] Menominee News, Mar.–Apr., 1957, p. 1.
[98] Menominee News, June 20, 1957, p. 6.

The Menominee government had failed to meet the challenge of termination planning. Advisory council committees made little progress and refused to include members representative of various tribal groups, in spite of repeated urging both from the superintendent and university advisers. Two professors advised the tribal chairman that the advisory council as "the elected representative agency of the tribe" should direct planning. The problem was "one of getting the existing committees, who have already accumulated much experience and information in their respective fields, to formulate the issues for tribal decision." [100] The advisory council, however, decided to abdicate authority to a special organization.

The new committee provided full-time paid positions for its three elected members. The men chosen by the general council included a long-time advisory councilman, the tribal politician who had made the motion for the full $700 per capita payment, and George Kenote, a Menominee called in from his job in Washington to chair this crucial committee. None of the three members, however, was willing to accept the position at the approved salary of $2 an hour. A deeply divided advisory council voted to increase the salary to $9,000 for the chairman and $7,500 for the other members.[101]

The creation of the committee led to the emergence of a leader who was to powerfully shape tribal affairs in the coming years. George Kenote had left the reservation many years earlier to work with the Indian Bureau. During 28 years of service, he rose to the position of assistant chief of the Bureau's Law and Order Division.[102] His long absence left him free from association with any of the reservation factions. A hard-working, dedicated, and ambitious man, Kenote was at first reluctant to leave his Bureau position. The Bureau agreed to give him a leave of absence. He accepted the position, with the understanding that he "was to have no connection with various tribal cliques, and that he was to exercise real authority." [103]

Kenote was elected chairman of the coordinating committee, and the great bulk of its planning responsibility was shunted off on him by the other members. When he speaks of the job which confronted the new committee, Kenote recalls the efforts of the tribal government with contempt. In the early years of planning, he maintains, the leaders were chronically indecisive, always making the "politically most pleasant" decision. Although they knew the tribe could not afford to continue certain popular services, they voted to authorize them regardless.

The committee began its work by studying the reports prepared by the researchers at the University of Wisconsin. The results were disappointing. "None of these studies," Kenote says, "had conclusions or a blueprint. Essentially they put in writing what everyone already knew. Action was left entirely to the tribe." [104]

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[99] Menominee News, Nov. 15, 1957, p. 1.
[100] Letter from Prof. Burton Fisher to James Frechette, Oct. 3, 1957.
[101] Menominee News, Dec. 17, 1957, p. 5.
[102] Interview with George Kenote, July 17, 1964.
[103] Ibid.
[104] Ibid.

Kenote decided that the committee's first need was to determine the legal provisions limiting the possible alternatives for future business and governmental organizations. He began by buying a copy of Wisconsin statutes and assigning one member of the committee to research and excerpt relevant passages. This man performed a job which was basically that of copying out and gathering together relevant laws and decisions for different topics assigned by Kenote.

The other two members of the committee devoted very little time to its work. James Frechette, advisory council chairman and ex-officio member, "didn't care" about the work of the committee and "provided no assistance." The fourth member "took off for hunting and fishing." He "didn't like desk jobs" and wouldn't prepare reports. He was therefore given the assignment of making speeches to interested groups and handling general public relations.[105]

With one member busy with low-level legal research and the other two largely unconcerned, the responsibility for policy recommendations was left to Kenote. He did almost all report writing and preparation of proposals, and took responsibility for the drafting of all propositions submitted to the advisory council or general council.[106]

The degree of Kenote's domination is evident even now in the strange attitude of other members toward the recommendations of the group on which they served. Frechette and Dodge speak of the work of the committee in the third person. They attribute all basic decisions to Kenote and to Frederick Sammond, the prominent Milwaukee lawyer employed upon Kenote's recommendation. "The Coordinating and Negotiating Committee," says Frechette, "was mainly Kenote and Sammond." They created the voting trust which Frechette asserts assumes that the "Menominees are incompetent." [107]

The assignment of the committee was extremely difficult. The taxation question, for example, presented a serious dilemma. The committee's first report discussed the issue:

> The Wisconsin constitution provides that 'the rule of taxation shall be uniform', meaning that we cannot hopefully expect special relief in the field of taxation * * *. At this time we can say no more than that we cannot afford to pay the general property tax on the Menominee forest lands. We could possibly pay the tax under * * * the Wisconsin forest crop law, but more than likely that tax will not yield enough revenue to pay a fair share of local government and all public school costs.[108]

In their second report, the committee broached the touchy issue of the possible loss of tribal control of Menominee lands: "We on this committee do not like to be the people to say this, but * * * the fact remains that * * * the interests of the Menominee people on the final roll will descend to their heirs in accordance with the inheritance laws of Wisconsin. That means that non-Menominee people can inherit interests in the Menominee property and probably will have the right of vote * * *." [109]

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[105] Ibid.
[106] Ibid.
[107] Interview with James Frechette, July 16, 1964.
[108] Menominee News, Feb. 24, 1958, p. 1
[109] Menominee News, Feb. 24, 1958, p. 3.

The coordinating committee proposed drastic action to deal with the tribe's dangerously deteriorating financial situation. The tribal budget was running an annual deficit of over $140,000. The committee recommended that the budget be balanced by ending free health and education services and cutting down other programs. It was also recommended that only half of the timber earnings be devoted to per capita payments, with the remainder being used to build up the capital reserve of the industry.[110] Although the committee was not afraid to make unpopular recommendations, it was unable to secure their adoption. Neither proposal was accepted.

The choice of a method for management of tribal resources after termination raised complicated issues and occupied much of the committee's time. The business plan, Kenote says, initially arose "from analysis of statutes to determine the courses of action available." After termination, Kenote insisted, the mill "could not continue to operate as a political operation." This demand eliminated two of the three basic forms of organization which were identified. Either a business corporation or a co-operative required annual election of directors at stockholders meetings. "That", the committee reported, "would not give us much in the way of a stable form of management."[111]

The remaining alternative was the formation of a trust controlled by a board of trustees. These men would include experts in finance and industrial management, and they would be given long terms of office. The committee arrived at this general position, and then reported to the tribe that it would be necessary to employ a law firm specializing in Wisconsin corporate and trust organization to work out a final proposal.[112]

The selection of an attorney was to have an immense impact termination planning. One committee member suggested the use of a Milwaukee firm which did much of the work for local industry. "Kenote went down to make contacts," he recalls. "In Milwaukee he ran into an acquaintance.* * * He told him to go see Sammond. No one knew anything about it. Sammond told Kenote that the job could all be done for $35,000." The other committee members accepted Kenote's judgment and his assurance that the cost would be kept down. "When the contract came," says one member, "it had an escape clause in it, but it was approved because work had already begun."[113] With less than 2 years remaining before the deadline, the tribe could not afford to change attorneys. Eventually the cost of legal advice was to exceed $100,000.[114]

Kenote was disgusted by the disorderly and short-sighted decisions of the tribal government. More and more he tended to exalt the ideal of nonpolitical "businesslike" operation of the tribe's property by men of experience and technical understanding. Doubtless, his frequent and close contact with businessmen and legal experts tended to reinforce this feeling. These beliefs were very evident in a proposal for business organization presented in mid-1958. Five voting trustees serving for 15-year terms and selecting their own replacements would provide "continuity of management and a resulting stability in the operation of business." [115]

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[110] Menominee News, Mar. 25, 1958, p. 1.
[111] Ibid., p. 2.
[112] Ibid.
[113] Interview with Al Dodge, July 17, 1964.
[114] U.S. Congress, Senate, Amendments to the Menominee Termination Act, 1961, p. 47.

By September, the Sammond law firm was actively participating in termination planning. Late in the month, the coordinating committee reported that "every course of action available with respect to business organization has been explored, and the plan submitted has been found, by qualified people, to be the most advantageous. This committee * * * continues to recommend wholeheartedly the establishment of the organization as reported." [116]

The reason of decision for the Menominees began in late 1958. The first basic decision came in the referendum on local government in September. In line with an earlier decision of the General Council, 89 percent of the voters supported a plan to organize the reservation area as a new county rather than to merge with existing counties.[117] Before the referendum, each voter had received an information sheet listing advantages and disadvantages of each alternative. The annual budget of the new county had been estimated at approximately $380,000, approximately $60,000 above the estimated cost of joining an existing county.[118] The information sheet mentioned that the cost would "probably" be higher in a separate county, but gave more prominence to the issues of retaining control of tribal assets and taxation and avoiding unequal representation which would result from a merger.[119] On the basis of this information, the people voted. Later it was discovered that the data had been incorrect and the budget of the new county would exceed $600,000. By this time, however, it was too late to reverse the decision.

In early November another referendum was held. It was decided that fishing permits were to be sold to outsiders. The sale and possession of alcohol on the reservation was legalized.[120]

After years of indecision, the issues were being formulated and being resolved. Kenote offered strong leadership, and he was well received by the tribe. In November, the general council voted 78 to 0 to extend the terms of coordinating committee members. Kenote was given a vote of confidence and a unanimous general council raised his salary to $10,000.[121]

The November meeting found Kenote in the midst of a campaign for political leadership of the tribe. In an open letter to the tribe he had announced his decision to sacrifice government benefits and put his reemployment right in question by taking another extension of leave "if the Tribe feels that it wants my services." [122]

> The tribal elections are set for November 4, I will run for the advisory board. I am sure that considerable savings can be worked out so that total costs will be less than now programed * * * I will work for better control of tribal operations and spending * * * We are coming to a time when "rule of thumb" and "playing it by ear" methods will not be

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[115] Menominee News, July 28, 1958, pp. 12–13.
[116] Menominee News, Sept. 29, 1958, p. 3.
[117] Ibid., p. 2.
[118] Amendments to the Menominee Termination Act, 1961, p. 111.
[119] Ibid., p. 110.
[120] Menominee News, Nov.–Dec. 15, 1958, p. 9.
[121] Ibid., p. 8.
[122] Menominee News, Oct. 14, 1958, pp. 6–7.

> enough. Our problems must be studiously approached and full time given to them. That is the course I will follow, if the Tribe wants my services.[123]

Kenote was proposing a radical change in tribal policy, but the advisory council continued to conduct business-as-usual. The council showed its non-concern by approving a budget exceeding the tribe's income by $75,000 and submitting a request that the Indian Bureau pay for all Federal functions. Although the Indian Commissioner rejected the budget, the general council voted 117 to 0 against any reduction in the yearly per capita payment for use in community expenses.[124]

The 1958 tribal election gave Mr. Kenote his greatest victory. Receiving the support of 339 of the 585 tribal members voting, his vote exceeded that of any other candidate by 25 percent. He led all candidates in four of the six election districts.[125] His success was in sharp contrast to the declining fortunes of Mr. Frechette, who received the lowest vote of the six men chosen for at-large seats on the advisory council.[126] Mr. Frechette was not to run again. Kenote had reached his high point in Menominee politics.

In spite of Kenote's victory, the old guard still controlled the advisory council, and the results did little to change their attitude. by a vote of six to four, Frechette defeated Kenote and was reelected chairman of the advisory council. Kenote was conspicuously passed over in the selection of members for key committees concerned with termination. He was relegated to a position on the Police and Fire Commission.[127]

The crucial question of the future business organization still remained before the tribe. In mid-December, 1958, the coordinating committee announced that the plan had been drafted and would soon be ready for presentation at district meetings. The plan was scheduled for general council action on January 9 and 10.[128]

One week before the general council meeting, the committee sent a two-page summary of the business plans to each member of the tribe. The statement was not written in simple terms easily understandable by tribal members, and it was certainly ignored by most. The following day some copies of the entire plan were made available and they "went like hot cakes." [129] The plan contained a number of issues worthy of careful scrutiny by tribal members:

1. A seven-member voting trust with a non-Menominee majority was to control the common stock and elect all directors for at least 10 years.
2. A board of directors with a non-Menominee majority was to elect officers and determine corporation policy.
3. A well-qualified outsider was to be hired as president.
4. The First Wisconsin Trust Co. was to be given "broad powers" to administer the holdings of minors and incompetents.[130]

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[123] Ibid., p. 7.

[124] *Menominee News*, Nov.–Dec. 15, 1958, p. 8.

[125] Ibid., p. 6.

[126] Ibid.

[127] Ibid., p. 3.

[128] Ibid., pp. 4–5.

[129] Minutes of the Menominee Indian Study Committee, Apr. 21–24, 1959, p. 8 (mimeograph).

[130] Memorandum to Tribal Members, Jan. 2, 1959, Coordinating and Negotiating Committee.

Three days of general council meetings were taken up with discussion of the business plan. Both the coordinating committee and the plan were heavily criticized. Some of the fears were reflected in one man's statement:

> I cannot agree with the statements of these white people and I am not interested in those papers. I want to tear them up. I have not agreed to termination. My forefathers were promised by treaty with the Federal Government that we would never be molested and our reservation would remain forever intact to preserve our own way of life. I resent these people trying to terminate me, and another thing—we cannot understand all the provisions set forth in them papers. I say tear them up.[131]

"Do you believe this plan is fair to the people," asked a tribal member, "when nine-tenths of them do not understand the plan?" [132] The level of understanding is evident in the argument of one member of the coordinating committee. The tribe had only two alternatives, he says, either a "trustee bank selected by the Secretary of the Interior, or a voting trust, locked up for 10 years while we were gaining experience." [133] No one in the tribe understood the full range of alternatives open for future organization; most were deeply confused by the complexities and technicalities of the massive document. With the deadline for submission of a plan only 2 weeks in the future, the only way to fulfill the requirement of the termination law was to submit this plan. The tribe really decided only that acceptance of the voting trust arrangement was preferable to the appointment of a trustee by the Secretary of the Interior. On January 17, 1959, the general council concluded debate and came to a vote. The final plan for business organization was adopted 91 to 16.[134]

"We pay high tribute," wrote Mr. Frechette, "to those tribal members who took the time to come and help us make this important decision. Whether you voted for the plan or whether you were among the 16 opposed to it, by your free expression you demonstrated that you were deeply concerned with the future and made your decisions known in a purely democratic way. * * * If any of us missed this privilege we can only blame ourselves."

"The big decision under Public Law 399 has been made. What the future holds in store for us, no one can tell. We can only hope and pray that our plans will be approved and that the future holds only happiness and success." [135]

A final report on planning activities was now submitted to the tribe, with a recommendation that the coordinating committee be dissolved and the Sammond law firm be retained for work in the State legislature.[136] The recommendation of the committee was accepted, and Mr. Kenote returned to Washington.

The tribal plan was submitted to the Interior Department before the February 1 deadline. The following months saw a series of intensive negotiations with Federal and State officials before the plan was ready for final presentation to the Wisconsin legislature.

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[131] Paxton Hart, "The Making of Menominee County", Wisconsin Magazine of History, Vol. XLIII (Spring, 1960), p. 188.

[132] Ibid.

[133] Dodge interview.

[134] Menominee News, Jan. 28, 1959, p. 1.

[135] Ibid., p. 8.

[136] Menominee News, Jan. 14, 1959, p. 4.

After many weeks of argument, the State legislature finally passed the legislation required by the tribe, but with certain amendments very seriously limiting the tribe's freedom of action. The legislation was passed in July, and the Governor withheld his signature to allow the tribe to accept or reject the amended measures. Once again, the Menominees were placed in a position of either accepting a plan before a fast-approaching deadline, or submitting to whatever decision the Secretary of the Interior made regarding a trustee. A study of the general council decisions at which the final decision was taken indicates the divisions and the bitterness which had grown in the tribe during the termination process.

"Very few Menominees understood these alternatives;" writes an anthropologist living on the reservation, "most knew only that termination was coming unless they did something to stop it and they felt powerless to find something." [137] Questioning large numbers of Menominees, he found almost universal concern, but quite different reactions from members of different factions.

The basic pattern of tribal politics had not changed. Most of the people, approximately 90 percent, were apathetic, feeling unable to do anything to prevent termination. The remainder of the population was divided into two groups, the elite and the "militant opposition." [138]

The 20 families of the elite controlled reservation politics and held an ambivalent attitude toward termination. All members of this group who were interviewed were opposed to immediate termination. Most felt, however, that if the tribe were given sufficient time to prepare eventual termination would be a good thing.[139]

The other extreme of the political spectrum was occupied by a loosely defined group bitterly opposed to any step toward termination. The rapid approach of termination brought a number of the more traditional members of the tribe into heated opposition against the leaders who seemed to be sacrificing the tribe's birthright. The opposition found no powerful leader and was plagued by jealousies and divisions. The tactics of the opposition were politically destructive:

> Invective is heaped on the political elite; they are calumnized and insulated at every turn. The elite are further accused of fradulent enrollment. Lawsuits are threatened, legal counsel sought, funds and publicity are solicited, and the aid of the Great Spirit is confidently involved.[140]

The great body of the people stood between the two small groups. Fearful, but confused, the people felt unable to do anything about the threat. Most of them stayed home when the crucial meetings were held. Their attitude is clearly revealed in their comment:

> It's all cut and dried.
> Everything is crooked anyhow.
> I'd lose my job if I went against the politicians.
> Nothing I can do will do any good.[141]

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[137] Edgerton, p. 1.
[138] Ibid.
[139] Ibid.
[140] Ibid., p. 12.
[141] Ibid.

Against this background of community division, the final general council meeting took place. Attendance was higher than for most council sessions, but substantially below that recorded when per capita payments were under discussion. Half of those present were members of the elite. One-third came from among those classified as apathetic, and the remaining sixth were bitterly opposed to termination.[142]

The tribal attorney attempted to explain the nature of the legislation, but few could understand his technical language. While the explanation was still in process, a member of the opposition interrupted with a typical opposition tactic—a demand to discuss the desirability of termination itself. An attempt to rule him out of order set off a series of opposition attacks on "parliamentary procedure, termination, the elite, the Federal Government, lawyers, Jews, Communists, and, finally, all whites. Speeches were made in English and Menominee, epithets were hurled in both languages, and for some 30 minutes there was absolute tumult. * * *"[143]

Order was restored, and the amendment was explained. When tribal members understood that the legislature had prohibited any sale or mortgage of tribal lands without State permission, and that this was a restriction applied to no other private forests, the response of the meeting "was one of righteous indignation." Opposition speakers demanded that the meeting be recessed for several days to allow tribal discussion of the proposal. Elite leaders reluctantly agreed.[144]

The final session was held 4 days before the deadline. Due to an energetic recruitment effort, the meeting convened with the elite in control. Between sessions, tribal leaders had gained State acceptance of a "face-saving formula" for the amendment. Plans for rapid approval were disrupted, however, when a State senator appeared to urge rejection of the plan. He contended that the tribal economy could not support the new organizations, that the people were not prepared for self-government, and that tribal refusal might lead to a reconsideration of the termination policy.[145]

The speech caused an uproar, but after some confusion elite members moved to end debate and come to an immediate vote. "A vote was taken, the elite stood for the amendment and the opposition stood against it while the other voters remained seated in confusion, or left the hall without voting. The final vote was counted as 79 in favor of the amendment, 18 opposed."[146]

The Menominee tribe voted to accept a limitation upon their right to sell or mortgage their property. Earlier they had approved a business plan permitting outsiders to manage their property. In different ways, the State and the corporation were to assume portions of the trust authority which the Federal Government was relinquishing. These were the strange fruits of the termination policy.

The decisions of the tribe had been made under the forms of democratic procedure, but the Menominees lacked the tradition, the leadership, the educational background, and the sense of community which make these forms meaningful. The termination process required fundamental decisions about the tribe's future, but the only institutions of tribal government were designed merely for making suggestions regarding routine administration. Not surprisingly, the tribal government failed. The real decisions were made by a man brought in from outside.

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[142] Ibid., p. 13.
[143] Ibid.
[144] Ibid.
[145] Ibid., p. 14.
[146] Ibid.

The final act of the tribe's long and inept consideration of the termination plan was now complete. Three days later, Governor Nelson signed the State legislation into law. In the 16 months remaining before termination, the tribe twice returned to Congress, but only slight relief was obtained. On the reservation, the divisions became more bitter with each successive step. Now the decision had been made. Confused and silent, not understanding the words of the lawyers and not wanting to believe that their lands could be taken from them, the Menominee people now waited for an uncertain and a threatening future.

CHAPTER 4.—THE SHUFFLING OF THE PAPERS

> "I think we should see that the Government trusteeship is liquidated just as rapidly as possible."—GLENN L. EMMONS, *Commissioner of Indian Affairs.*

From the beginning there has been a deep ambivalence in the attitude of the American people toward the Indians. Greed and injustice have been answered with reforming zeal and used clothing collections. The stereotype of the lazy, drunken Indian is balanced by a romantic notion of the ancient Indian nations and by a vague feeling of national guilt. Too often, however, it has been those living near the tribes and dealing with them who have victimized the Indian people. The well-meaning reformers, on the other hand, having only passing contact with the Indians, frequently proposed naive and simple solutions to many-sided problems. The most popular goal of such reforms has been rapid assimilation, giving the Indians a chance to succeed, like everybody else. The United States has successfully integrated many other minorities. Surely, it is argued, if the Indians were given incentive and some initial assistance, they would adopt the superior values of white culture. This theme recurs again and again in discussions of U.S. Indian policy.

Indian policy: The background.—Relations with Indian tribes were of fundamental importance to the American Government for the first century of its existence. The Bureau of Indian Affairs was founded in 1834 as a division of the War Department, and for many years its chief concern was the removal of Indians from the path of settlement. The principal duties of the Bureau involved the negotiation and implementation of treaties, the regulation of Indian trade, and supervision of educational and religious activities.[1] The Bureau was able to conclude five treaties with the Menominee Tribe between 1831 and 1856, each ceding large portions of land in return for small payments and certain guarantees.[2] In 1954, the tribe moved to the reservation area, and the following year an Indian agent took residence.[3]

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[1] John J. Hebal, "Field Administration of the Bureau of Indian Affairs in Minnesota and Wisconsin" (unpublished Ph. D. dissertation, Department of Political Science, University of Minnesota, 1959), p. 65.

[2] Centennial Committee, pp. 41–47.

Underpaid, granted sweeping authority, and subject to little supervision, Indian agents of this period are remembered for corruption and abuse of their power. "I am compelled to say," commented James Garfield, "that no branch of the National Government is so spotted with fraud, so tainted with corruption, so utterly unworthy of a free and enlightened government, as this Indian department * * *.[4] The Menominees were painfully familiar with this problem. During the 1860's the tribe brought charges against several successive agents, each of whom was dismissed after an investigation.[5]

The decades after the Civil War saw changes in Bureau organization and procedures, but it was not until 1887 that a fundamentally new Indian policy was adopted. The allotment policy was designed to bring the benefits of civilization to the Indians by giving each his own portion of land to cultivate. Much earlier, Commissioner Crawford had argued that "common property and civilization cannot coexist." [6] A Menominee agent of the post-Civil War period reached a similar conclusion. "Land should be given to them in severalty * * * and they should be taught to depend each upon his own unaided efforts to procure the necessities of life * * *." [7]

The promise of progress, individual independence, and rapid assimilation gained the support of the reformers for the Dawes bill. Each Indian was to be made a small landowner and given the tools for simple agriculture. Support of land-hungry Western States was won by a provision opening to white settlement all land remaining after approximately 80 acres was allotted to each Indian. The bill provided a 25-year trust period, preventing improvident sale in the early years of the experiment. Full citizenship was to be granted to all Indians accepting the provisions of the law.[8] The General Allotment Act became law in February 1887.

The passage of the act marked the beginning of a new period of exploitation. President Cleveland submitted to pressures for rapid allotment. Later, the Republicans proudly claimed that Interior Secretary Noble "opened to settlement more Indian reservations than all his predecessors combined." [9] This movement reached its apex during the Harding administration when Secretary Fall sponsored legislation to forcibly purchase remaining tribal lands, opening them to white speculation, and renouncing future responsibility for the Indians. The bill passed the House and was barely defeated in the Senate.[10]

Most tribes accepted the allotment policy, and rapidly lost their land. The policy was built upon several false assumptions: (1) that Indian population was stable or declining, (2) that all land was of approximately equal value, and (3) that the Indians were ready and willing to become farmers.[11]

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[3] Keesing, p. 152.

[4] Hebal, p. 69.

[5] Keesing, p. 167

[6] Harold E. Fey and D'Arcy McNickle, "Indians and Other Americans" (New York: Harper & Bros., 1959) p. 65.

[7] Keesing, pp. 167–168.

[8] Hebal, p. 83.

[9] Loring Benson Priest, "Uncle Sam's Stepchildren: The Reformulation of Indian Policy, 1865–87" (New Brunswick, New Jersey: Rutgers University Press, 1942) pp. 250–251.

[10] John Collier, "Indians of the Americas" (New York: New American Library, 1948) p. 145.

In Wisconsin, only the Menominees rejected the Allotment Act. A tribal lumber camp had begun 15 years earlier. Lumber interests, with Government support, had made several attempts to gain control of the rich forest, but tribal leaders had held firm. By the time of the Allotment Act, the tribe had become deeply suspicious of any attempt to alter the status of their lands.

Bureau relations with the Menominees were sour. There were continual struggles over the regulation of the lumber operations. In 1908, legislation was adopted directing that the forest be managed for sustained-yield production. Tensions remained, however, and tribal complaints focused about the issues of administrative mismanagement and the placement of whites in the best jobs.[11] The fifties saw a long struggle, with the tribe attempting to put control of the business in a Menominee board. The movement failed, but bitterness grew.[12]

The New Deal brought a dramatic change in Indian policy. Under the leadership of Secretary Ickes and Commissioner Collier, new legislation was enacted in 1934. Land allotment was ended and a program of land purchase was begun. Tribal self-government and tribal enterprises were to be recognized and encouraged, and Indians were to be given jobs in the Indian Bureau civil service.[13]

Changes were rapid. The Menominees quickly succeeded in gaining replacement of the mill manager. The Bureau supported a bill permitting the tribe to sue the Government for mismanagement of the forest.[14] In 1934, the tribe was granted the right of "advance review and approval" of the agency budget. A leading tribal politician was appointed reservation superintendent.[15]

Even those favorable actions did not long remove suspicion of Government intentions. The Indian New Deal was built around an act providing Federal charters for tribal incorporation and promising gradual transfer of authority. In the end, the tribe refused to organize, fearing that the act might bring taxation, loss of business protection, and removal of Federal benefits.[16]

Rejecting self-government, tribal leaders had nevertheless gained a powerful instrument for control through budget review. Tribal leaders had long been suspicious of Bureau expenditures and investments of tribal funds. Tensions were now multiplied by the constant threat of tribal rejection of Bureau budget proposals. Bureau officials developed a siege mentality:

> Menominee efforts to usurp this authority * * * engenders resentment and bitterness. Officials have felt that general Menominee disinterest in tribal organization has led to the development of a powerful but irresponsible leadership. Some staff members have believed that Menominee leaders have a definite policy to make Mills management such an unpleasant

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[11] Sady, p. 4.
[12] Ibid.
[13] Collier, p. 157.
[14] Sady, p. 5.
[15] Ibid., p. 6.
[16] Ibid.

> affair and to interfere in it so much that the efficient running of the operations is impossible, and then to bring further suit against the Government for mismanagement.[17]

The Menominees had been granted very real authority, but full reponsibility remained with the Bureau. Conflict was the inevitable result of the arrangement.

In Washington, New Deal policies faced mounting congressional criticism. Commissioner Collier's relations with Congress were never good, and they declined further during the war. The Indian Bureau had been exiled for the duration to Chicago. Hamstrung by isolation and denied a minimal budget, the Bureau was an easy object of attack. In 1943, the Senate Indian Affairs Committee issued a report after a lengthy investigation. The report made an unqualified recommendation for immediate and total liquidation of the Bureau.[18] Under heavy criticism in both Houses, Collier resigned in February, 1945.[19]

Evolution of a policy.—The Bureau had been bitterly attacked by a Democratic Congress. The assault was sharply intensified when the Republicans took control of Congress in 1947.

In 1947, Acting Commissioner Zimmerman testified before a Senate committee that Bureau personnel costs could be cut by terminating services to certain advanced tribes. He listed 10 tribes, including the Menominees, as excellent possibilities and submitted draft legislation. The bills proposed removal of Bureau officials, but tribal property was to be protected by a 50-year trust.[20]

Zimmerman, however, was replaced in 1950 by Dillon Myer, an aggressively innovating Commissioner with no experience in Indian affairs. Under Mr. Myer, the Bureau began a fundamental revision of policy. New emphasis was placed on training Indians for "permanent off-reservation employment." [21] Indians were encouraged to obtain loans from private banks, and Myer overrode previous legal opinion, ruling that Indians could mortgage trust lands.[22]

Myer's policy followed the 1949 recommendations of the Hoover Commission. The task force report proposed a policy of rapid integration of Indians into American society, and recommended that the Bureau be shifted to HEW. "Complete integration" was the ultimate goal, and transfer of Federal functions to State governments was the recommended interim policy.[23]

As the fifties began, the Menominee Tribe was an obvious target for the termination movement. One of three tribes in the Nation with sufficient revenue to meet the annual cost of community services, the Menominees were also able to provide a small yearly payment to each member. The Menominee Tribe was assuredly comfortable, but it was not wealthy—its reserve was just adequate for the scope of the timber operation. Because the tribe was self-sufficient, it was considered for termination. The financial situation of the tribe improved dramatically however, in 1951.

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[17] Ibid., p. 8.

[18] MacIntyre, p. 72.

[19] Hebal, p. 120.

[20] Joint Hearings, p. 715.

[21] William J. Zimmerman, Jr., "The Role of the Bureau of Indian Affairs Since 1933," Annals of the American Academy of Political and Social Science, CCCXI (May 1957) p. 35

[22] Ibid., p. 36.

[23] Hebal, p. 154.

The Court of Claims awarded the tribe $8.5 million for forest resources destroyed by Federal mismanagement. The award weakened the tribe's claim to continued Federal protections in two respects. With almost $10 million in the Treasury, the Menominees were obviously in a strong fiscal position. In the second place, the decision weakened the tribe's relations with the Indian Bureau and with Congress. The Menominees had ungratefully proved in court that the Government had failed in its trust responsibility. Thus, by accident of time and circumstance, the Menominee Tribe became the particular object of those in Congress and in the Bureau who were supporting the adoption of a new Indian Policy.

In 1952, the tribe's general council adopted a plan for the use of tribal funds. The plan included a substantial program of capital improvements to the mill, in accord with the recommendations of the mill manager. Of the remaining money, $3 million was to be set aside as an operating reserve, and approximately a third of the funds were to be distributed in the form of a $1,000 payment to each tribal member.

Local Bureau officials recommended approval of the tribe's plan. The area director made no mention of termination.[24] The proposal, however, met unfavorable reaction in Washington. The reservation superintendent then wrote the area director again, explaining the tribe's program. His letter ended with a strong endorsement:

> The members of the Menominee Tribe have given serious thought to the development of the programs indicated above. The programs * * * will call for legislation and also considerable work on the part of the tribe, the Bureau, and the area offices involved. Since the programs call for approval by the general council and by the Commissioner of Indian Affairs after more detailed plans are developed, I am certainly in favor of going along with the tribe's tentative plans.[25]

During this period Commissioner Myer visited the reservation. "I expect," he told a tribal meeting, "that there is no Indian group in the country that basically is better fixed economically than the Menominees * * *. I doubt if there is any group that is more advanced and able to look after its own business * * *." [26] He predicted enactment of legislation to "enable us to go out of business entirely within 5 years." [27]

A tribal delegation was sent to Washington to attempt to gain Bureau approval, but they met stubborn refusals. The Bureau demanded "positive steps" toward development of a termination plan.[27] The delegation capitulated, and the tribal attorney reported to the Bureau that the delegation was "prepared to recommend to the general council that virtually all operations on the Menominee Reservation, except for the Menominee Indian mills, be taken over by the tribe within 2 years." [28] The exclusion of the mill operation was highly significant. The mill was responsible for virtually the entire tribal income and employment. The Bureau was to blur this exclusion in later testimony on termination legislation.

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[24] Letter from Donald Foster, Minneapolis area director to Commissioner Myer, Feb. 25, 1952.

[25] Letter from Menominee Superintendent Arentson to Area Director Foster, Mar. 3, 1952.

[26] Robertson, "Chronology * * *," pp. 3–4.

[27] Ibid., p. 3.

[28] Joint hearings, p. 586.

Four days after the concession of the delegation, the BIA Commissioner issued a memo outlining Bureau demands. To gain approval the tribe's proposal must include a study of tribal relations with Wisconsin government and of the possibility of State or tribal assumption of Federal responsibilities. Tribal delegates were warned that the Bureau would oppose an attempt to gain congressional approval without such a plan.[29] "It is our belief," Mr. Myer wrote, "that the tribe * * * will grow in strength only through the gradual assumption of responsibility and thus it will gain experience and independence."[30]

By this time, the area director saw the way the wind was blowing, and sent off to Washington for personnel to conduct a more thorough study of the tribal proposal. "You are fully aware," he wrote the Commissioner, "that our staff here in Minneapolis is very limited and the only personnel that we have who can adequately pass on certain phases of this program is the Forestry Division. We will need assistance from your office. * * *"[31]

The Bureau is a conservative and highly centralized organization with power concentrated in the Washington office. The specialized functional divisions establish policy and detailed procedures for the entire Bureau. Each of the area offices serves as an intermediate administrative organization managing a region containing several States. Ideally, each area office includes staff experts who directly supervise work on the various reservations. Below the area are the agencies, each under the direction of a superintendent administering one large reservation or several of less importance. At this time, the Menominee Agency was one of three agencies under the jurisdiction of the Minneapolis area office. The Minneapolis office was weak and understaffed, and kept in existence only by political pressure.

During the period of Menominee termination planning, the area director was consulted at length, but his opposition was given little weight in Washington.[32] Often the area office was bypassed. The degree of direct central control is illustrated by the fact that communications between the agency and Washington did not receive the normal clearance through the area office. Receiving only information copies of many communications, the area director could exercise little control over the program.[33] A study of the correspondence files clearly demonstrates that the impetus for termination was from the top down.

The central office rapidly responded to the request for staff assistance, and a member of the Program Division was dispatched to the reservation the following month. His initial report was optimistic, finding that "the circumstances of the tribe with respect to leadership, attitude, economic situation, and participation in administration and financing enterprises and services * * * are very promising."[34] "The tribal leadership situation," he wrote, "appears very favorable in that we have two able and strong leaders. * * * There are also several other members of the tribe who exercise influence and are potentially able to take greater roles in leadership.[35] From the beginning, the Bureau showed its willingness to accept the tribal elite's view of the community, and to accept their claim to leadership at face value.

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[29] John B. Kelliiaa, "First Report of Preliminary Programming Activity at the Menominee Indian Reservation," report to BIA Program Division, April 1952, p. 1.

[30] Letter from Commissioner Myer to the advisory council chairman, Mar. 25, 1952.

[31] Letter from Area Director Foster to Commissioner Myer, March 1952.

[32] Hebal, p. 201.

[33] Ibid., p. 259.

[34] Kelliiaa, p 6

Following this preliminary survey, the BIA assigned a "management analyst" to prepare a more detailed study of reservation conditions. While the first report had been couched in the vagaries of bureaucratic objectivity, the second man was frankly concerned with Bureau strategy for implementing the termination policy. The Bureau, he warned, "cannot afford to sit tight while the tribe is developing its ideals of a program designed to lend to withdrawal. * * * It seems that the process of passively allowing Bureau programs to be run by the tribe has been accomplished at the cost of poor management. * * *"[36] He urged rapid action to demonstrate the Bureau's determination to terminate. He recommended changing the Menominee Agency to a mere field office, directed by a man chosen to actively prepare the way for termination. Another recommendation called for cutting off all Federal assistance, thus increasing the cost of remaining under BIA supervision. "Such a move," he advised, "should be prominently described to the tribe at the earliest opportunity to have the full effect."[37]

Program division staff members made several visits to the reservation between April and July 1952. These trips provided general background information but little opportunity for serious analysis of the tribe's economic and social situation. Most of the time was spent in discussion with Government officials and with leaders of the tribal elite. In mid-July, the management analyst submitted a detailed report.

The Menominee tribal government, the analyst reported, was seriously threatening the exercise of Federal responsibility. "Where in the past a superintendent may have been willing to listen to the wishes of the tribal government, he and his staff now largely execute its orders. The staff frequently takes direct orders from advisory council members. This practice has been encouraged by the tenure of a superintendent who often refuses to make policy decisions * * * and by the fact that almost all agency employees are Menominee (and thus primarily loyal to the tribe, not the Bureau)."[38]

The tribal leaders, he asserted, were not yet prepared to take control because they lacked an administrative structure for execution of the programs. The analyst recommended development of such a structure, and suggested that the power of the advisory council be consolidated by abolition of the general council.[39]

In July 1952, the Menominees disregarded the Bureau's warnings and legislation was submitted to Congress authorizing the $1,000 per capita payment. The Bureau made an unfavorable report, and the bill was killed by the Senate committee.

BIA officials believed Menominee leadership to be highly qualified, and they still hoped to gain their support for the development of a termination plan. Wishing to prevent disruption in the approaching tribal election, pressure was curtailed for the remainder of 1952. Myer was now serving out his final months of office. As his term neared its end, the Minneapolis area director expressed his reservations. "It is our judgment," he wrote, "that the Menominee withdrawal program must be approached with real caution and care for here we have a reservation with great natural resources * * *." [40]

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[35] Ibid., p. 5.

[36] Eric Stork, memorandum, Program Division, undated, before June 1952.

[37] Ibid.

[38] Eric Stork, "Organizational Factors Involved in Withdrawal From Menominee Reservation," July 16, 1952, p. 4.

[39] Ibid., p. 5.

As the Indian Bureau passed through the interregnum between administrations, the termination policy was under active consideration in Congress. House Concurrent Resolution 108 was passed on August 1. Termination was thus officially made the policy of Congress and several tribes, including the Menominees, were declared ready for termination. The Interior Department was specifically directed to prepare draft legislation for these groups by January 1954.

While Resolution 108 was under consideration, Glenn Emmons, the New Mexico banker who had been nominated for Indian Commissioner, was carefully questioned by the Senate Interior Committee. Senator Watkins elicited a firm commitment to the enforcement of the termination policy.

> Senator WATKINS. Apparently there has been a definite objective of the Government of the United States for many years to finally withdraw as the guardian of the Indians.
>
> Mr. EMMONS. I am absolutely in favor of that, Senator. I do believe it is going to take a longer time for certain tribes than others * * *. I think we should see that the Government trusteeship is liquidated just as rapidly as possible.[41]
>
> * * * * * * *
>
> Senator WATKINS. I would not want to approve any Indian Commissioner who was not in sympathy with getting these Indians prepared as American citizens and enabling them to stand on their own feet. If he had an idea of making them a museum piece, and putting them on a reseravtion and insisting that they develop their old culture, I would seriously object to it.[42]

One week after the Emmons testimony, the Bureau recommended rejection of another Menominee per capita bill, unless the tribe agreed to a number of amendments providing for termination. Bureau officials, working with Senator Watkins, arranged several meetings to consider amendments to the bill.[43] In early August the Assistant Secretary of the Interior wrote the tribal delegation affirming the BIA commitment to termination "at the earliest possible time." He suggested that the tribe "initiate, as soon as possible, the study of tribal resources, industrial programs, and tax problems that will be confronted after termination." [44]

Emmons was sworn into office on August 10, just days after the passage of Resolution 108. The new Commissioner lost no time in making known his intentions regarding the Menominee Tribe. In mid-August he wrote the Minneapolis area director, asserting that Congress supported the goal of Menominee termination. He informed the director that the legislation had been promised early consideration in the coming session of Congress. "The official position of the Department," he wrote, "and the one that should guide you and Superintendent Arentson in dealing with Menominee Tribe is expressed in Assistant Secretary Lewis' letter * * * reporting favorably on this bill and concurring in the final termination date." [45]

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[40] Letter from Area Director Foster to Commissioner Myer, Feb. 6, 1953.

[41] U.S. Congress, Senate, Committee on Interior and Insular Affairs, "Nomination of Glenn L. Emmons," 83d Cong., first sess., July 15, 1953, pp. 5–6.

[42] Ibid., p. 7.

[43] Joint hearings, p. 609.

[44] Letter from Assistant Secretary Lewis to tribal delegation, Aug. 10, 1953.

The Bureau had defined its official position, and the word was passed from Washington. The trustee of the Menominee people had made a judgment that they were now fully competent to manage their own affairs with no further Federal protection. Before considering the final stages of policymaking and the process of implementation, it seems well to review the process by which this decision was reached.

It is often a difficult task for a bureaucracy to establish meaningful and rational criteria for justifying a major change in policy. Generally, administrative policy grows by accretion, by changes of emphasis and a succession of gradual alterations from previous policy. The termination policy emerged through this process of gradual change. Successful operation of the Bureau requires the maintainence of a good working relationship with concerned congressional committees. By the end of World War II this relationship had deteriorated to the point where the replacement of the Commissioner became necessary. Accumulated grievance toward existing policy within the Bureau combined with congressional pressures to produce a gradual movement toward the policy position which had become entrenched in Congress.

Termination of supervision had always been the long-range goal of the Bureau. The initial Zimmerman concession began the movement toward the policy of immediate termination. This concession, together with the Hoover report set the stage for a new emphasis on the policy under Commissioner Myer. Finally, the accession of a new administration and the assumption of key committee posts by determined advocates of termination led to crystalization of congressional opinion in the form of a directive to the Bureau. At the same time, the Bureau's high appointive positions were filled with men in full sympathy with the termination policy.

The specific decision to terminate the Menominees also had the character of a gradual change. There was no well-defined decision based on explicit criteria. The Menominees were known as an advanced tribe, one of three groups in the Nation paying for their own community services.[46] After the 1951 judgment, tribal prosperity became both more obvious and more irritating. Mr. Zimmerman had stated that the tribe could be terminated, but with certain crucial protections. In 1952, the Bureau made a superficial investigation of the tribe and the administrative mechanism of the agency. Nothing was done to consider the demands which integration into the State and local government systems would place upon the tribe. No study was made of the tribal economy and the economic implications of termination. The reports show almost total failure to understand social and cultural conditions on the reservation. Even the opposition of the

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[45] Letter from Commissioner Emmons to Area Director Foster, Aug. 19, 1953.
[46] Fey, p. 46.

Bureau officials who worked most closely with the tribe made little impact against the idea from Washington.

The Bureau recommended a radical change in policy toward a few tribes while maintaining existing relations with all others. In the absence of genuine guidelines to justify this differentiation, the easiest procedure was to rank the various tribes in terms of some sort of objectives and quantifiable information. This ranking could then serve as a kind of criterion, justifying termination for the highest ranking groups. The BIA probably lacked the resources and certainly lacked the inclination to attempt a total evaluation of the ramifications of the termination policy, but it was far less difficult to prepare simple rankings.

Several "objective" measures of readiness for termination suggested themselves at once. The most obvious of these concerned the size of tribal assets and the ability of the tribe to finance community services, These measures showed the Menominee Tribe to be clearly one of the most favorably situated groups in the Nation.

The Menominee Tribe, in 1955, received the lowest per capita Federal support, an allowance of only $30.83 per tribal member. In spite of some increases for termination preparations, the following year's figure remained the third lowest in the country.[47] Total Federal expenditures on the reservation were negligible. From 1945 to 1954, appropriations had ranged from $20,000 to $70,000 per year. Only after passage of the termination bill did expenditures begin to rise, reaching $126,000 in 1956.[48] Throughout the process of formulating the legislation, the fact of the tribe's self-sufficiency was constantly stressed.

Although some 20 Indian tribes possessed higher assets per capita in 1954, the Bureau frequently referred to the impressive holdings of the Menominees.[49] "The Menominee forest," the BIA reported to Congress, "is an important asset to Wisconsin and the United States as one of the outstanding forests in the country under sustained yield management. On October of 1953, there was $9,736,498 to the credit of the Menominee Tribe is the U.S. Treasury. Tribal enterprises include the Menominee sawmill and related or subsidiary industries with a replacement value of about $6 million * * *."[50]

If any tribe appeared ready for termination, it was the Menominees. The tribe was self-sufficient and held large assets. To these factors were added the intangible advantages of an apparently able leadership and a cooperative attitude on the part of the State government. It seemed quite reasonable to BIA officials that the tribe could absorb what were thought to be small additional expenses involved in termination. There was, however, no effort to determine the nature of tribal responsibilities after termination. The BIA did not even bother to contact the State government before drafting the legislation. The judgment of the "management analyst" seemed reasonable, and the Bureau made its decision.

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[47] U.S. Congress, House, Committee on Interior and Insular Affairs, Present Relations of the Federal Government to the American Indians, 85th Cong., second sess., 1958, p. 32.
[48] Ibid., p. 36.
[49] Ibid., p. 32.
[50] Joint hearings, p. 590.

The termination hearings.—The directives of Resolution 108 placed heavy demands on the new administration in the Bureau. It was necessary to draft and support a series of bills involving a basic policy change in widely varying circumstances. All this was to be done in 4 months. During this period, the BIA did nothing to significantly assist the tribe in planning. At the Menominee hearing, Bureau officials claimed that they didn't want to interfere in tribal preparations. The area director testified:

> A tribe like the Menominees who themselves say they are ready for administration of their own affairs, with which we are all in agreement, certainly is capable of carrying the ball in the development of this kind of program. The Indian service's heavy hand should not be on them at all. They have done a swell job.[51]

During the course of the hearing a number of different arguments were used by Bureau officials to justify Menominee termination. Self-sufficiency and fiscal status were emphasized and it was asserted that tribal education and income levels approximated those of the adjoining counties. It was also argued that since tribal leaders had been warned for years that termination was coming, the tribe could rightly be held responsible for preparing itself.[52]

The Bureau presentation emphasized the tribal vote accepting a modified termination plan. The vote, BIA officials implied, not only removed the ethical question of breaking the treaties, but also proved the tribe factually competent for self-government. The Bureau also argued from the 1952 agreement of the tribal delegation to assume certain responsibilities in a 2-year period. The crucial importance of the exclusion of the mill operation from this agreement was not explained.[53]

The BIA made no explanation of the context within which the tribe had voted. The decision of 200 people who needed money, who were told that termination was coming anyway, and who hadn't the least understanding of the implications of termination, was taken as the considered judgment of the entire tribe.

Implementation begins: 1954–58.—In June 1954, the Menominee Termination Act was signed into law. The act left full responsibility for termination preparation to the tribe itself. The tribe was authorized to spend its own funds "to select and retain the services of qualified management specialists, including tax consultants, for the purpose of studying industrial programs." [54] The tribe, in other words, was to pay the expenses for implementing the decision to deny them the rights which they had been guaranteed by treaties.

Although the law authorized the Interior Department to provide "reasonable assistance" to the tribe, the language was not specific and the provision was permissive rather than compulsory.[55] Major planning responsibility was vested in the tribe; the BIA was allowed to provide whatever it felt to be reasonable assistance. The Bureau chose to put a restrictive interpretation on the provision.

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[51] Ibid., p. 617.
[52] Ibid., p. 586.
[53] Ibid.
[54] U.S. Congress, Menominee Termination Act, Public Law 399, 83d Cong., second sess., 1954, p. 1.
[55] Ibid., p. 2.

Relations between the tribe and the BIA continued to decline. Six months after enactment of the law, the tribal chairman told a reporter that the Menominees were warning other tribes about "what to expect from the Indian Bureau. We don't want other tribes to be 'given the business' the way we have," he said.[56] The chairman placed the main responsibility for the policy upon the new top level BIA officials. He specifically protested the transfer of the area director, a move which Menominee leaders believed was caused by his sympathy for the tribe's position. "Under Indian Bureau policy today," he asserted, "lower echelon officials cannot afford to cooperate—Washington won't allow it." [57]

The intentions of the Bureau were clearly announced to the tribe in January 1955. The reservation superintendent listed three basic objectives: (1) Creation of an independent business organization to manage the timber business, (2) gradual transfer of management of agency functions to the advisory council, and (3) the establishment of a small agency staff to provide assistance.[58]

The agency staff was immediately cut by 50 percent, with the tribe assuming responsibility for some of the eliminated positions. It was apparently assumed that termination planning required fewer administrators than had routine operations. "The agency reorganization," the superintendent explained, "was not an economy measure. Its basic purpose was to provide the kind of organization necessary to carry out the Secretary's responsibility * * *." [59] As the tribe took management responsibility, the agency felt that its workload might lighten, making men available "to provide the Menominee people with whatever services and assistance they may call on us to provide." [60]

Throughout 1955, however, the Agency was unable to provide assistance. In March 1955, the Interior Department Solicitor ruled that the Bureau had "misinterpreted" the law directing the distribution of profits from the forest operation to tribal members. It was now necessary to recalculate payments for each member. This work demanded the time of the Agency staff for the remainder of the year. The tribe received very little concrete assistance.

The 1955 Wisconsin Legislature created a State study committee to assist the tribe and to prepare recommendations for the legislature. After attending the first meeting, the superintendent strongly praised the helpfulness and cooperativeness of the committee.

> We cannot, of course, become overconfident and leave all problems up to this group * * *. But it was a wonderful experience to see so many competent people willing to lend a helping hand to the Menominee people and I know we all agreed that Jim Frechette was right when he said, "We are proud of the State of Wisconsin." [61]

With such an impressive State effort, there seemed little need for Bureau assistance. The superintendent evidently felt that his primary role was one of admonition and warning. "During the recent prosperous years," he wrote, "the Menominee people have become accustomed to and could afford a much greater community service than any other community provides for its citizens in the State of Wisconsin. But the treasury reserve cannot be depleted. You have a big investment and to reduce the cash reserve brings on possible pitfalls and risks, which it would be disastrous to ignore."[62] He warned the tribe that they faced large capital expenditures for establishing county government, buying highway equipment, and building a new school, and asserted that the tribe must soon begin charging members for utilities and for medical care.[63] These arguments, however, failed to persuade the people to deny themselves the $700 per capita payment resulting from the Solicitor's ruling.

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[56] Shawano Evening Leader, Oct. 5, 1954.
[57] Ibid.
[58] Menominee News, Jan. 27, 1955, p. 1.
[59] Ibid., p. 3.
[60] Ibid.
[61] Menominee News, Apr. 10, 1955, pp. 6–7.

Ill feeling between the tribe and the Bureau flared up again in midsummer, with a tribal attack on the superintendent. In Washington, a tribal delegation complained to Representative Laird of his uncooperative attitude. The delegates requested his removal, charging him with failing to attend tribal meetings, with asking the forestry staff to ignore the requests of the tribal forestry committee, and with "advising Agency personnel, particularly the officer specifically assigned to coordinate the termination program to refrain from cooperating with the Advisory Council * * *."[64] The tribe's request was granted, and a new superintendent arrived in August.

The Bureau offered no additional help. Although many would have to move from the reservation to find employment after termination, the BIA refused to assign a relocation officer to the Agency.[65] The most constructive Bureau effort of this period was the Adult Education program, sending some 70 tribal members to vocational schools in September, 1955. In spite of tribal protest, however, no funds were made available for college instruction until the next year.[66]

The tribe rapidly assumed control and management of a number of community services. In response, the Bureau announced a further large cut in Agency staff. "It seems clear," the superintendent wrote, "that the law requires the tribe to do the planning and to foot the expenses. It also seems clear that the Agency will provide whatever 'reasonable assistance' is requested of it by the tribe * * *. It is a decision which is largely up to the tribe, or at least Congress seemed to feel that it was."[67]

Termination was scheduled for 1958, but all of the fundamental problems remained unsolved. "It is surely impractical," Representative Reuss argued in Congress, "to expect that tribal leaders can convince 3,000 unsophisticated Indians of the wisdom and necessity of such planning and of the need for major outlay for specialist advice from the modest tribal resources. In fact, 19 months after the passage of Public Law 399 * * * the tribe has not retained, so far as I know, one single consultant or specialist to help it in its plan."[68]

Almost 2 years after enactment of the bill the Agency program officer reported on the major problems remaining before the tribe. The central issue was economic. "The limited potential of these industries to absorb the latent labor force on the reservation in the face of * * * the completely competitive status these industries will acquire * * * make imperative the organization of the reservation industries on a firm * * * business footing * * * The tribe's experience in an unsuccessful garment factory venture clearly indicates that this task will require the best available assistance, and perhaps interim safeguards."[69] The BIA had assured Congress of the tribe's ability to manage its own affairs, but now there were serious doubts.

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[62] Menominee News, Apr. 19, 1955, p. 1.
[63] Ibid.
[64] Menominee News, July 1955, p. 1.
[65] Menominee News, Aug. 19, 1955, p. 2.
[66] Ibid. and Menominee News, Sept. 20, 1955, p. 5.
[67] Menominee News, Nov. 22, 1955, p. 1.
[68] Representative Henry S. Reuss, "Statement on H.R. 9280, A Bill to Protect the Menominee Indians," undated, 1956, p. 4.

The structure of tribal government was now recognized to be inadequate for the decisions which soon had to be made.

> The tribal government is a very democratic but often slow and awkward vehicle * * *. In the current situation where problems are indeed complicated and come with accelerated regularity * * * delays will become costly * * *. It seems unlikely that any appreciable amount of authority will be conveyed to the advisory council by the general council in view of the serious contrasting views being expressed on the total problem. In fact the last general council suffered delays in proceeding with the agenda because of an abortive attempt to suspend advisory council withdrawal activities for a period of 90 days * * *.[70]

The report was also critical of the advisory council's failure to include representatives of important reservation factions on the committees planning termination policy. The clique of tribal politicians had also failed to establish any channels of communication with the tribe. The Menominee News, the Agency newsletter, remained the only source of information, and its value was undermined by the bitterness between the tribe and the Bureau.[71] The limitations of the dominant clique were becoming obvious.

The Agency report noted the problems of the tribe, but it did not deal with underlying causes. To do so would have required a questioning of the very assumptions upon which the termination policy had been constructed. The report assumed that the tribe constituted a real community, and that divisions could be effectively remedied by broadening the base of discussion and involvement in planning. The advisory council members were seen as genuine leaders of the tribe, to whom the people would respond if only communications were improved.

In Washington, the 1956 legislative proposals of the tribe provoked an active BIA defense of a strict interpretation of the termination policy. The Assistant Secretary objected to a provision requiring sustained yield management of the forest on the philosophical ground of preserving the tribe's complete freedom of choice. "The Menominee termination legislation already enacted," he asserted, "granted to the Menominee Indians the same rights with respect to their property that other citizens have."[72]

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[69] Reginald W. Quinn, "Summary State of Withdrawal Status," Report of Menominee Agency, Mar. 12, 1956, p. 10.
[70] Ibid., pp. 12–13.
[71] Ibid., p. 11.
[72] U.S. Congress, Senate, "Relating to the Plan * * *," p. 3.

The sharpest departmental criticism was reserved, however, for a provision requiring that the tribe, the State, and the Federal Government must all agree before a termination plan could be implemneted. "Ultimate responsibility," the Assistant Secretary insisted, "for determining when the time has arrived for terminating a Federal trust responsibility rests solely with Congress. The Indians have no vested right to the continuance of the trust relationship * * *." [73] The Bureau made much of the fact that the tribe had once voted to approve termination but showed no desire for a further tribal division.

The question of Federal reimbursement for termination expenses was vitally important to the tribe, but the Bureau offered no opinion in its report to Congress. Figures provided in the report indicated that tribal funds had already dropped to approximately $2 million, the minimum reserve required for the mill operation. The tribe's capital had rapidly declined and there had been a deficit of almost $250,000 in the tribal budgets of the past 2 years, but the Department refused to endorse the plan for Federal payment.[74]

Difficulties for the tribe arose not only from definite BIA decisions, but also, on occasion, from the normal workings of Bureau procedures. In attempting to gain firm administrative control of the Bureau, Commissioner Emmons had adopted a policy of frequent transfers.[75] The problems created by this policy are illustrated by the transfer of the assistant superintendent of the Menominee Agency in early 1957. The tribal chairman protested:

> The advisory council * * * is very much opposed to the idea of losing a man in the Agency setup who has become very helpful to the tribe * * *. It is our honest opinion that to * * * replace him by someone who would be entirely foreign to the plans of operation of the Menominee Indian Tribe would cause a great setback in progress toward termination. We have our doubts that such a replacement could satisfy the tribe on termination date as to the effectiveness and accuracy of the work to be done by the Agency in the short time remaining for the complete development of plans for termination.[76]

Early in 1957 it became obvious that neither the tribe nor the Wisconsin government could meet the December 31 deadline for submission of the termination plan. A tribal delegation was sent to Washington to obtain a 2-year postponement. The request placed the Bureau in an uncomfortable position. In early June, the chairman of the House subcommittee wrote the Bureau inquiring "what impelling and unforeseen circumstances" justified the bill for a postponement." [77] The Commissioner's reply was equivocal, leaving defense of the bill up to the tribe:

> * * * a very substantial amount of research and counseling assistance has been provided to the tribe * * * supplemented

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[73] Ibid., p. 4.
[74] Ibid.
[75] Hebal, p. 228.
[76] Menominee News, Jan. 28, 1957, p. 5.
[77] Letter from House Subcommittee Chairman Haley to Commissioner Emmons, June 3, 1957.

> by whatever data was requested of our Area Director and Menominee Agency Superintendent * * *
>
> The tribal leadership has made few commitments and decisions * * * This, we believe, has been largely predicted on the premise that by taking such complicated issues before the tribal membership in advance of having available a comprehensive plan for a very promising community organization and economy * * * there would be widespread individual moves for pro rate withdrawals of assets * * *

* * * * * * *

We note from your letter that you are requesting from the Menominee Advisory Council a justification for a hearing, and we believe that is the proper source for such advocacy * * *[78]

When a hearing was scheduled, it was necessary for the Bureau to prepare a report on the bill. A draft report was circulated within the Bureau agreeing to a two-year extension, on the condition that the Department be given full authority to transfer all tribal property to a trustee should the tribe fail to meet the deadline.[79] It was finally decided, however, to recommend against passage of the bill.[80] Ultimately, the extension bill was caught up in a struggle between Senator Neuberger and Representative Laird, and no action was taken. Thus the deadline for December 31 remained in effect. The Minneapolis Area Director wrote Washington for instructions:

> We would appreciate being advised as to what steps, if any, we should take at this level, to assist the tribe in preparation of plans as now required. We have received no information from the tribe or the agency that they have any plans to step up their activities towards the development of termination plans; we do not know whether the tribe proposes to develop plans as required.[81]

The Bureau attempted to apply pressure for rapid action on the termination plan. During the summer, for example, the BIA decided that no work would be done to bring reservation roads up to State standards until the plan was submitted, even though the remaining time would be insufficient to do the necessary work. Tribal leaders blasted the announcement as an "absurdity" and "entirely inconsistent with prior positions."[82]

Perhaps the greatest strength of the BIA termination policy was the unbending commitment to the ideology underlying the act. This consistency was shattered, however, when the Secretary of the Interior spoke in Wisconsin in early October. He praised the quality of the forest and asserted that, "The Federal Government cannot supinely permit the forest * * * to be butchered into oblivion." "Let me assure," he said, "that the department has two explicit policies: First, to see that the members of the tribe are accorded the same rights as the other American citizens; second, to cooperate in assuring that the plans for future management of the Menominee forest make adequate provision for sensible conservation of that matchless asset."[83] The Menominees, in other words, were to be given "freedom," but not enough to make any mistakes.

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[78] Letter from Emmons to Haley, June 11, 1957.
[79] Draft report, May 29, 1957, p. 4.
[80] U.S., Congressional Record, 85th Cong., first sess., Aug. 21, 1957, p. 10462.
[81] Letter from Area Director Holtz to Commissioner Emmons, Sept. 9, 1957.
[82] Menominee News, Nov. 15, 1957, p. 5.

The Department thus completely reversed its policy. The most fundamental assumption underlying the termination legislation was that the Menominees were as competent as any other citizens to freely manage their own property. The Department still insisted that the tribe was competent to establish and support a local government, but the free choice regarding the disposal of tribal property was to be qualified by restrictions which would apply to no other Wisconsin corporation. The Menominees were to lose the advantages of trusteeship without gaining the privileges of ownership.

Late 1957 saw a frantic effort by University advisers, State officials, and the tribe's attorney to put together some kind of plan to meet the legal requirement. The Bureau's assistance was requested in preparing a simple analysis of the tribe's Treasury deposits, but the advisers had to wait months for the data. Finally a pro forma "progress report" was submitted on the last day.

The plan takes shape: 1958–60.—The files of the Menominee Agency and the Minneapolis area office reveal little BIA action regarding the Menominee situation during 1958. Planning was left to the tribal coordinating committee and the State study committee. During the year an extension of the deadline was granted, but Congress cut Federal reimbursement to 50 percent of termination costs. Agency officials kept in communication with planning groups by attending State study committee meetings, but they continued to interpret their responsibilities in a highly restrictive manner. The Bureau refused to even offer opinions upon proposals under consideration.

The policy of involuntary termination was formally abandoned in 1958, but the BIA attitude toward Menominee termination remained unchanged. As far back as 1956, Commissioner Emmons had emphasized the importance of tribal consent in a key memorandum to BIA officials. "A good program," he said, "is one which results from the desires and fits the need of a particular group of Indians. In whole or in part the program should, if possible, be the work of the Indians themselves."[84] Criticism continued, however, and in September 1958, the Secretary of the Interior clearly stated a new policy:

> * * * (I)t is absolutely unthinkable to me as your Secretary of the Interior that consideration would be given to forcing upon an Indian tribe a so-called termination plan which did not have the understanding and acceptance of a clear majority of the members affected * * *.[85]

After submission of the tribe's plan in January 1959, the BIA again began to play an active role. The Department ruled that the plan was not "disapprovable," but its legal status was confused by the fact that it depended upon the adoption of State legislation which had still not been submitted to the State legislature. For almost 3 months the plan was to remain in a kind of legal limbo, while the Department tried to decide whether it has been properly submitted.

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[83] Milwaukee Journal, Oct. 2, 1957.
[84] Watkins, p. 54.
[85] Quoted in Edgerton, p. 16.

"We have difficulty in anticipating what the position of the Secretary of the Interior will be," reported Wisconsin consultants, "although we are pleased to report excellent liaison with and cooperation from the BIA since our work began in February."[86] "To this very day, 2½ months after the tribe's submission we are still not sure what role the Secretary will play, how searching his scrutiny will be, what standards he will use in acting on the economic plan, or even whether a valid submission of the plan has occurred."[87]

The Interior Department developed two criteria for judging the plan, the standard of "reasonable equity" and that of conformance with State law. The primary demand of reasonable equity, the Department decided, was the protection of individual property rights. The two sections of the plan which were held questionable under this criterion provided that tribal securities would not be negotiable for a period of several years, and that the tribal corporation would have an option to buy stock at "fair market value"; thus unduly influencing the price offered the individual.[88]

The Department was prepared to accept some reasonable limitations on property rights if they were obviously essential to the success of the plan, but officials were sharply critical of more drastic proposals. Thus, while the need for stability could justify a 5-year grant of exclusive stock purchase rights to the corporation, a 15-year provision was considered inequitable. The Assistant Secretary telegraphed his objection:

> Fifteen-year outright restriction seems not to be in keeping with the lifting of trusteeship. * * * You may advise Judiciary Committee that we do not presume to tell legislature what laws Wisconsin should enact, but this proposal would cause great concern to Department of Interior in making property conveyance in keeping with reasonable equity * * *.[89]

Later, the proposal of a 30-year restrictive covenant against the sale or mortgage of Menominee property produced another strong protest: "We think the proposal unfair and discriminating against the Menominee's property rights in a manner not applied to other Wisconsin citizens."[90] Individual property rights rather than the future of the tribal economy determined the Department's evaluation of the business plan.

The State legislation was signed 2 days before the deadline, and the Interior Department immediately accepted the plan "in principle." Months of legal work and negotiations were required to work out the final details and the legal technicalities, before the Department formally certified adoption of the plan in November.[91]

In late October 1959, the Department made a belated offer of a "few days" of technical assistance. Assistant Secretary Ernst wrote, "I am happy to comply with your request to make available several of our technicians to consult with the tribe on whatever plans you may be interested in developing. We have several men who have had a great deal of specialized training and experience and should be able to provide useful information in the following fields: Outdoor recreation, sport hunting and fishing, forest industries, and attracting industry." [92] The tribe failed to take action on the offer.

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[86] John H. Bowers and Burton R. Fisher, "Report and Recommendations to Menominee Indian Study Committee," Letter of Transmittal and Report, Apr. 20, 1959, p. 13.

[87] Ibid., p. 5.

[88] Minutes of the Menominee Indian Study Committee, Apr. 21–24, 1959, p. 100.

[89] Letter from Assistant Secretary Ernst to James Frechette, June 30, 1959.

[90] Green Bay Press-Gazette, July 11, 1959.

[91] Letter from Acting Interior Secretary Elmer Bennett to James Frechette, Oct. 30, 1959.

In early 1960 an arbitrary transfer caused a damaging setback to planning for the timber operation. The mill manager who had operated the tribal mill since 1947 was transferred in January to a similar position in Minnesota. The man he replaced there, was brought to the Menominee Reservation to preside over the final year of a program with which he had no familiarity.[93]

In January 1960, the Bureau requested an appropriation for the operation of the Menominee Agency, admitting that the tribal economy had declined to the point where assistance was essential:

> The source of income to the tribe has been diminishing. . . . Where Government operations are being conducted on other reservations where tribes have no source of income, the Bureau operations are financed entirely from the general funds of the Treasury. In view of the termination status of the tribe and the status of tribal funds, there appears to be no basis upon which the Bureau could insist that the tribe make available its funds to carry out Bureau responsibilities. The use of appropriated funds is proper and, in fact compelling if the Government is to carry out its responsibilities. . . .[94]

Thus, the Bureau admitted that the tribe was no longer able to pay its bill for normal reservation services. The feasibility of the entire termination project, however, was based on an assumption that the tribal economy could support local government with little difficulty. It was rapidly becoming evident that the costs of county government would far exceed those of Bureau services.

In a telegram to the tribal chairman in March 1960, Commissioner Emmons expressed the Bureau's concern "about the need for tribal actions to begin implementation of new organizations contemplated in plan for future management." Reminding the chairman of the BIA offer of technical assistance, he concluded: "But since you did not respond, we assume tribe has chosen to do planning on its own." [95]

Representative Laird sponsored another bill for postponement of termination in 1960. He warned, "It is my firm opinion that chaotic conditions would arise if termination takes place as now contemplated." [96] The area director opposed the bill, arguing that it would be "detrimental" to the tribe.

> * * * I do not see how the Indians can be any more prepared for termination 3 or 5 years from now than they are today. The tribe * * * has completed a termination plan * * * and all Indians who desired to take special training under the adult

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[92] Letter from Assistant Secretary Ernst to James Frechette, Oct. 19, 1959.

[93] Shawano Evening Leader, Jan. 16, 1960.

[94] U.S., Congress, House, Committee on Appropriations, Subcommittee on Interior Department, Hearings, Department of the Interior and Related Agencies, Appropriations for 1961, 86th Cong., second sess., 1960, p. 612.

[95] Letter from Commissioner Emmons to Frechette, Mar. 4, 1960.

[96] Letter from Frechette to Secretary Seaton, Apr. 19, 1960.

> educational program have availed themselves of it (or have dropped out for various reasons after enrollment * * *.) It seems to me that any delay will only serve to make the Menominee people more and more dependent and demanding of special Government services which I cannot see will be of any particular benefit to them as a tribe or as individuals."[97]

Tribal delays forced Assistance Secretary Ernst to write again in July. "You will recall," he told the tribal chairman, "that this Department used all the flexibility of the trust termination law during the course of 1959 to save the type of plan that issued from the Coordinating and Negotiating Committee * * *. The alternative would have been for us to impose a plan of our own upon the tribe. Now, should the tribe default in implementing its own plan, we believe that the tribe will get very much less sympathetic consideration from the Congress, or anyone else considering the problem."[98]

Senate hearings on the postponement amendment were held in mid-August. Although the Assistant Secretary earlier had stated his "hope" that the bill would be enacted, the Department's report opposed the measure: "We recommend that the bill be not enacted in its present form. However, if after considering all of the facts and after hearing from the tribe and other interested parties Congress feels that a postponement is desirable then we would have no objection if Congress itself should fix a new termination date, which we feel should not be later than July 1, 1961."[99]

The tribe asserted that extensive improvements were necessary to reservation utility systems to bring them up to minimum Wisconsin standards before termination. "The existing systems are functioning," the Department replied curtly. "Whether they should continue * * * is a question that need not delay termination. The State cannot be expected to close down the present systems arbitrarily without providing a reasonable time in which to provide alternative service. If the real point is that the Federal Government should finance the tribe in establishing new systems, we feel that the argument has even less merit."[100]

By implication, the Bureau argued that tribal acceptance of Federal financial assistance created an obligation to implement the termination plan. Officials pointed out that $200,000 had been spent for tribal planning, $700,000 for road construction, and more than $668,000 for adult education. When these costs were added to a large commitment for school construction and other planned expenditures, the total would exceed $1,300,000 by 1961.[101] "The Menominee Indian Tribe," the report concluded, "has had assistance over the past few years in an amount probably never before equaled by such a small community."[102] Congress had made a large fiscal commitment, and was determined to hold the tribe to its bargain. The Menominees had a reputation for soaking the Government, and now they were obviously trying to get everything possible out of termination as officials wished to justify expenditures which had been made at their recommendation.

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[97] Letter from Area Director Holtz to Martin Mangan, May 4, 1960.
[98] Letter from Assistant Secretary Ernst to Frechette, July 1, 1960.
[99] U.S., Congress, Senate, "Hearings, 1960 Amendments," p. 5.
[100] Ibid., p. 6.
[101] Ibid., p. 57.
[102] Ibid., p. 23.

The Interior Department's attitude was that the large Government investment in the arrangement made a basic repudiation of the policy beyond question. While the Department was mildly favorable to a proposal for meeting termination costs, it recommended against the establishment of a $2.5 million capital loan fund for resources development. The report held that the tribes could probably obtain commercial loans in spite of the Senate's restrictive covenant on Menominee property.[103] Plainly, the Department hoped to evade this issue with a hopeful comment.

The Department's report to the Senate subcommittee was a sharp variance with the sympathetic attitude expressed in early summer by the Indian Commissioner. A tribal delegate had reported that the Commissioner was particularly concerned with the tribe's financial problems. He told the delegates that "if he had more time he would like to go to Congress and ask them to give us a million and a half dollars to be used strictly for modernization and expansion. * * *"[104] Emmons, evidently, was overruled.

The Department recommended far less than Emmons suggested in private conversation, and Congress granted less than the Department recommended. The tribe did not gain reimbursement, and was granted only 4 additional months before termination.

The final months.—Facing continual difficulties in attempting to implement the plan, the general council requested that the BIA assign Mr. Kenote to work with the tribe. The Commissioner granted the request, and decisions began to be made as he took hold. Kenote had been assigned to work only through December, but the advisory council made a "prayerful" request for an extension to the new deadline.[105] The tribe was so bitterly divided and ineffectively led that decisions could be made only by someone from outside. "Judging from the past," the superintendent reported, "it is my belief that Mr. Kenote's services should be continued if at all possible. I am certain that tribal momentum on termination would slow to a snail pace should he leave."[106]

In late December, the tribal attorney was informed that should the tribe fail to put the new corporation into operation by the deadline date, the Department would appoint a management trustee the next day. The Secretary's office had definite plans for negotiations with potential trustees. A trust indenture had already been prepared.[107] No delay would be tolerated.

The national election gave some encouragement to those Menominees determined to make a final attempt to prevent termination. Both the President-elect and Representative Udall had opposed the termination policy. Furthermore, Philleo Nash, former Wisconsin Lieutenant Governor and a trustee of the new tribal corporation, was named in January as a consultant to the Indian Bureau and a member of the task force to suggest policy changes. Nash was conducting a "campaign" for appointment as BIA Commissioner. He was acquainted with the problems of the tribe and in a position to help.

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[103] Ibid., p. 29.

[104] Minutes of the meeting of July 12, 1960, Menominee Advisory Council, p. 12 (in the files of the Menominee Agency).

[105] Resolution 3, Menominee Advisory Council, Dec. 8, 1960.

[106] Letter from Superintendent Robertson to Area Director Holtz, Dec. 6, 1960.

[107] Minutes of the meeting of the trustees, Dec. 30, 1960, Menominee common stock and voting trust (in the files of the Menominee Agency).

A new assistant secretary had been appointed by the time the Menominee legislation came before Congress but several officials actively involved in termination planning remained from the pervious administration. The task force had still not submitted its recommendations. Nash was now an Associate Commissioner, but he had not yet been designated for the top position. He told tribal delegates that he "had no administrative responsibility" and he refused to take a position which might jeopardize his chances for the higher position. He "felt that it was dead set" and couldn't be changed.[108] "Before his confirmation he wouldn't say a word," recalls a tribal delegate.[109]

The tribe requested legislation which provided an 8-year trial period before termination was made final. An 8-year tax exemption and a $2.5 million loan fund were requested for the tribal business.[110] The requests came to the Department at a time of uncertainty and transition, both in organization and in policy.

The departmental report asserted that the basic economic problems confronting the tribe would seriously threaten the possibility of successful termination. Both the financial condition of the tribe and the recession in the timber market undermined the tribal plan.

> To accomplish its plan, the corporation will have to extend the production of lumber and related products while increasing the sales proportionately. * * * The present concern of the tribe stems from the fact that it is not able to sell all the present production of lumber at prices it considers fair. * * * Sales and receipts have fallen off almost 50 percent." [111]

The tribe faced the need to modernize, to expand, and to diversify its economic base, but it lacked even the funds necessary to keep the community running.

The Department hedged notably on the fundamental issue of the workability of the termination plan. "While we are of the opinion * * * that the Menominee termination is a sound one and can be made to succeed, nevertheless, the plan may encounter serious difficulties, and hardships may result to the tribe, the State, and local units of government." [112] The Department, therefore, suggested a 4-year trial period, during which time the Secretary could transfer the assets to the corporation while retaining the right to resume control if necessary. An irrevocable commitment would be avoided until the plan's success was evident.[113]

The report also recognized that the tribe might be unable to obtain needed development capital commercially. The Department suggested a 4-year program of "Federal credit on a standby basis." [114]

In his first appearance before the Senate subcommittee, Assistant Secretary Carver characterized the Menominee situation as "one of the stickiest problems facing this committee and the Bureau." [115] The tribe, he said, opposed the act, and Congress itself had demonstrated its uncertainty by granting two extensions. The basic question was economic. "Everyone," he said, "seems now agreed that given the present developments * * * of the mill itself, proceeds of the mill won't reach all of the needs which will follow on full termination." "Therefore," he continued, "almost everyone interested in the welfare of the Menominees suggests congressional modification of the act in some form or another." [116]

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[108] Name withheld.
[109] Interview with Al Dodge, July 17, 1964.
[110] U.S., Congress, Senate, "Amendments to the Menominee * * *," p. 4.
[111] Ibid.
[112] Ibid., p. 6.
[113] Ibid.
[114] Ibid., p. 5.
[115] Ibid., p. 29.

Mr. Carver analyzed the various possible modifications. Repeal was not considered a serious possibility. The Department opposed granting any subsidies after termination. "To me," he said, "it seems offensive that we would have assistance programs for Indians based on no sounder ground than that they are Indians, because that is the kind of reverse sort of discrimination which I don't think the Government ought to be in." [117]

With these alternatives eliminated, the Department recommended the policy which it euphemistically called phased extension. Carver asserted that "the Department's report on that, equivocal as it may seem, represents what we consider the most logical alternative if the Congress should determine that there is still a Federal responsibility for services or assistance to the Menominees. I could not promise, and I do not think any reasonable man could promise, that whatever date you fix the situation will be materially better or, indeed, any better at all. * * *" [118]

From the earliest studies until the final testimony, the BIA had made no systematic attempt to chart the economic future of the tribe in order to obtain the most important date for evaluating the termination policy. During the hearing, Assistant Secretary Carver was asked about the amount of assistance which would be required in future years. "Well," he replied, "we know what is being spent now." [119]

The confused and equivocal report of the Department evoked no enthusiasm. Termination took place on schedule, less than 2 weeks later. After more than 100 years, the troubled relationship of the Menominee Tribe and the Bureau of Indian Affairs was coming to a close. In his last message to the tribe, the reservation superintendent answered the critics of the termination policy. "There will be rough going for some of the people for a while," he said, "but I firmly believe that they, for the most part, have the background, ability, and intelligence to adjust rapidly to the new scheme of things." [120]

Chapter Five.—The Wisconsin Idea

> Since the Federal Government was determined to terminate its own responsibilities it was up to the State to bend every effort in helping the tribe to determine a sound and workable plan * * *
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> Our treatment of the Indians forms one of the saddest chapters in American history. We trust that this carefully worked-out plan for transferring the Menominee Tribe

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[116] Ibid., p. 33.
[117] Ibid., p. 34.
[118] Ibid., p. 36.
[119] Ibid., p. 40.
[120] Quoted in Green Bay Press-Gazette, Apr. 29, 1961.

> from wardship to self-determination will furnish one bright ray of hope, in the grand tradition of the "Wisconsin Idea"—GOVERNOR GAYLORD NELSON.

Wisconsin politics after the Civil War followed the pattern common to the Middle West. Republican dominance was established, not to be challenged for many years. One party rule, however, was far less significant than the actual control exercised over both parties by business interests. In the late 1800's business control and political decay were evident everywhere. State politics was controlled by the railroads and the timber barons. Railroads enjoyed special tax privileges.[1] Exploitation of lumber resources was particularly blatant, leaving much of the State cutover wasteland, of little use for agriculture. The quality of State politics is illustrated by the 1879 decision to sell the State park system to the lumber interests.[2]

Wisconsin reformers finally found a leader in Robert LaFollette and the "progressives" took control of the Republican Party in 1900. LaFollette created an effective reform movement and succeeded in dominating State politics for a quarter century. The Democratic Party "became a residual agency not only for its own traditionalists, but occasionally for conservative Republican voters who preferred Democratic candidates to LaFollette."[3]

The spirit of the progressive movement remains strong in Wisconsin to the present. Governmental power was to be taken from the interests and placed in the heads of public spirited men and trained experts who would advise them. "The Progressives constantly emphasized the spirit of good government rather than any preconceived plan or abstract solution. They met each problem as it came along instead of imposing rigid principles upon governmental procedure."[4] The major contribution of the progressivism was in method rather than in ideology. Wisconsin became a national model of progressive government.

Two enduring results of the progressive movement were the establishment of the Nation's first legislative reference library, and the assumption of a responsibility of providing expert advice to State government by the University of Wisconsin.[5] The new library quickly became the mechanism by which specialized information reached the legislature. The library attempted to provide "a body of experts to gather information about the laws, to obtain statistics, to draft and redraft through the guidance of the representatives of the people, laws which deeply affect the people."[6]

The university worked closely with the reference library and placed its resources at the disposal of the State government. President Van Hise envisaged the university serving all citizens of the State, and he actively encouraged faculty participation in governmental agencies.[7]

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[1] Larry Gara, "A Short History of Wisconsin," (Madison: State Historical Society of Wisconsin, 1962), p. 184.

[2] Robert S. Maxwell, "LaFollette and the Rise of the Progressives in Wisconsin" (Madison: State Historical Society of Wisconsin, 1956), p. 165.

[3] Leon D. Epstein, "Politics in Wisconsin," (Madison: University of Wisconsin Press), p. 37.

[4] Gara, p. 201.

[5] William J. Siffin, "The Legislative Council in the American States" (Indiana University Publications: Social Science Series, No. 18; Bloomington, Ind.: Indiana University Press, 1959), p. 25.

[6] Ibid.

[7] Ibid.

In 1931, legislative services were further extended with the initiation of the executive council. A forerunner of the present legislative council, it worked to prepare legislative programs between sessions, to examine the operation of State administration, and to consult with important State interests.[8]

Perhaps one reason for the expansion of the legislative machinery has been the relative importance of the Governor. "The Governor's position," writes Epstein, "is limited by a number of factors * * *. Prominent among these factors are the 2-year term of office and the election, rather than appointment, of the attorney general, secretary of state, and treasurer * * *. The usual provisions for government-by-commission also constitute limitations on the Governor's authority * * *. Generally his appointive power is limited to top-level positions * * *." [9] With a short term, little administrative control, slight patronage, and a feeble party organization, the Governor lacks the resources for effective leadership.

Policymaking authority is formally in the hands of the legislature, but the legislature is an unstable body meeting only for infrequent short sessions. Legislative salaries are low, and most members hold another full-time job. The legislature meets once each 2 years. The session lasts about 7 months.[10]

Problems created by the brevity of the session are aggravated by the lack of experience on the part of many legislators.[11] There has been a tendency toward abdication of policymaking authority to the committees of the legislative council. The study committees meet periodically between sessions. More than 25 studies may be in process at a given moment. Most legislators serve on at least one committee, and a substantial number of laymen are included.[12]

During a long period of stable one-party domination, Wisconsin worked out an "objective" and nonpolitical method of solving State problems. From the outset, the State's handling of the problem of Menominee termination was to follow this pattern.

Background to termination.—Two years before passage of the termination bill the State human rights commission conducted a general study of the condition of Wisconsin Indians. The report printed a very favorable picture of the State's relations with Indian groups, but warned that the State should formulate a program for coping with the accelerating trend toward Federal withdrawal of certain services. "Most important," the report concluded, "Wisconsin will require a planned and orderly withdrawal of Federal authority coordinated with planned expansion of State jurisdiction." [13]

The commission's report glowed with optimism about the Menominees. "The Menominees are a prosperous people. In the entire country, only the Oklahoma oil Indians are in a better financial position than the Wisconsin Menominees." [14] The Menominees made a strong contribution to the economy of their region.

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[8] Ibid., p. 54.
[9] Epstein, p. 26.
[10] Ibid., p. 100.
[11] Ibid., p. 103.
[12] Siffin, p. 189.
[13] Wisconsin, Governor's Commission on Human Rights, "Wisconsin Indians" (Madison, 1952), pp. 7–8.
[14] Ibid., p. 23.

The tribe had some problems. A survey showed that less than 5 percent of the children had adequate diets. The community hospital had been condemned, and more than $100,000 was needed to meet minimum standards.[15] "Nevertheless," the commission commented: "These are problems that the State will not have to take the initiative in solving. The tribe itself is going ahead. It is self-reliant and enterprising; it needs only the cooperation and advice available through regular State channels * * *." [16]

In a brief foreword to the report, Governor Kohler expressed his support for the goal of ultimate assimilation:

> We are hoping and striving for the time when there will be no Indian problem. When that time comes, the word American will mean the same thing to every American, and all American citizens shall enjoy the life, liberty, and pursuit of happiness * * *.
>
> Progress made by several tribes and many individuals indicates that Wisconsin Indians have proven their ability and their right to advance to freedom in the fullest sense, not through charity but through opportunity. The State can do no less than meet this initiative and courage halfway.[17]

Certainly, it would have been well for Wisconsin to undertake a systematic program of cooperative planning for an orderly transition, beneficial to the Indian people. Like many good recommendations, however, this one could not compete with the many complex and pressing demands confronting the understaffed State departments. The problem was presented without urgency and without a deadline. It seemed safe to ignore this proposal. A solution would be found if the State were seriously threatened by the result of inaction.

Although Senator Watkins asserted that Governor Kohler had endorsed the termination proposal in his foreword to the State report, actually no State action was taken until the legislation seemed likely to pass. The BIA made no effort to contact State officials until January 1954, after repeated protests from Representative Laird. During late 1953, a tribal planning group made several visits to Madison to explain their problems. Perhaps the first tangible result of these contacts was the passage of a resolution on the 1953 termination bill by the Governor's human rights commission:

> Whereas, H.R. 2828 would relieve the United States of obligations assumed in treaties entered into with the Menominee Tribe extending back 100 years and more; and
>
> Whereas, the Menominee tribal representatives have not been accorded hearings on this legislation * * *.
>
> Therefore, be it *Resolved*, That the members of both Houses of Congress be petitioned to assure the Menominees a right to be heard before properly constituted bodies on legislation which so vitally affects their welfare and human and property rights.[18]

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[15] Ibid., pp. 25–26.

[16] Ibid., p. 26.

[17] Ibid., p. 3.

[18] Wisconsin, Governor's Commission on Human Rights, Resolution, Oct. 16, 1953 (mimeo).

During the early discussions, Tax Commissioner Harder raised an objection to the proposed per capita payment, arguing that tribal funds "belonged to future generations."[19] Because of his concern and because of his responsibility for the difficult problem of integrating the reservation into the State tax system, the Governor appointed Harder chairman of a five-man committee to consider the State's position on the Menominee legislation. The committee included the welfare and school directors, the attorney general, and the secretary of the Human Rights Commission. The committee had just begun its study at the time of the 1954 hearings.[20] The work of the committee was done outside normal working hours, on evenings and weekends. Few conclusions had been reached at the time the legislation was under consideration.[21]

State officials felt that they "had no choice in anything." The argument, it seemed, was between the tribe and Congress. The State had no power to intervene, but would have to pick up the expenses. An earlier trip to Washington convinced Harder that the subcommittee "had already made up its mind." All the State could do was to "object that they couldn't be terminated as soon as planned."[22]

The State's interpretation of its position was identical to that made by the BIA. In June 1953, the Associate Commissioner told a tribal delegation that the State was legally obligated to provide services for tribal members.[23] "That reference to the enactment of State legislation," a BIA official was to testify, "* * * is only a delaying factor. It does not affect the ultimate final termination of the trust."[24]

The first response in Madison was one of agreement with the broad objectives of the legislation, but concern with the length of time allowed for implementation. The Governor was "in sympathy with" the goal, but he wished to "have it done a little more orderly."[25] Wisconsin was not given sufficient time to study the impact of termination; no State investigations had been made in such fields as education, welfare, and highways.[26] At the time of the hearing, no decisions had been made and "the State was not committed to anything."[27]

Believing the issue had already been decided, Harder concentrated upon convincing the subcommittee to grant some needed modifications. "My purpose," he testified, "is not to be critical of anyone that had anything to do with the drafting of the legislation. I am merely in the position that I am when appearing before committee in Wisconsin, that we speak only from the administrative angle of bill * * *."[28]

The only specific objection Harder raised related to the work of his own department. Under Wisconsin law, the reservation could not be integrated into the State until a complete valuation of the property was made for taxation purposes. This requirement, he asserted, could not be met sooner than the end of 1957, a year later than the termination date favored by Senator Watkins.[29]

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[19] Interview with Commissioner Harder, July 14, 1964.
[20] Joint hearings, p. 599.
[21] Ibid., p. 656.
[22] Harder interview.
[23] Homer B. Jenkins, "Conference on Termination," memo to the files, June 11, 1953.
[24] Joint hearings, p. 627.
[25] Ibid., p. 658.
[26] Ibid., p. 657.
[27] Harder interview.
[28] Joint hearings, pp. 650–651.
[29] Ibid., pp. 652–653.

Watkins was not impressed by Harder's testimony. "If we don't begin to set some deadlines and get some termination date," he said, "it will go on again and again and again." [30] "We are already trying to cooperate to the extent that we can * * *," Harder replied. "And all my purpose in being here is, is to give you an idea of some of the problems which make it necessary to get our work done through our legislature by December 31, 1956. We have only one legislative sesssion before that date. That is about 8 or 9 months from now." [31]

Almost as an afterthought, Harder stated that the State government felt that it was impossible to enact definitive legislation without further study. He suggested that Wisconsin be given a chance to draft legislation acceptable to the tribe, the BIA, and the Congress. He proposed that Congress establish a termination deadline in mid-1959, allowing three legislative sessions.[32] The subcommittee ignored the suggestion.

Watkins' bill for termination in late 1956 was passed by the Senate, but the House subcommittee insisted that the termination deadline be extended to December 31, 1958. Mr. Harder's presentation may have been influential in gaining an additional 2 years. In retrospect, Harder's mission to Washington is seen in rather heroic proportions in Madison. One State official recalls that Harder had to "fight like hell" to gain additional time.

Harder assumed that the basic decision was already made, and his strategy was based on this assumption. This assumption, however, may have become a self-fulfilling prediction. In each case where a State government opposed a termination bill, the bill failed to pass Congress.

State Planning Begins.—No real planning was done until the termination policy became law. The State administration's surprise and concern are illustrated by the statement of a welfare official.

> Now I can't find anything in my memory or anything in the records that says the State of Wisconsin ever asked for this termination legislation, so it's between the Federal Government and the Indians themselves * * *. The State of Wisconsin, however, is earnestly and determinedly set in effort to see that right is done in this case.[33]

He pointed out the danger of devastating the area and destroying the timber industry through bad management of the forest. "I think it comes as a profound shock," he concluded, "to find out that they are mixed up in terms of taxation, public finance, who's going to maintain the roads, what their working relationships are with other units of local government, and how they're going to hold their property * * *." [34]

In his 1955 budget, Governor Kohler requested an appropriation to finance a study by the Legislative Council. The State senator from the region introduced a resolution calling for the establishment of a Menominee Indian Study Committee. The State was to approach the issue of termination in the tradition of the "Wisconsin idea."

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[30] Ibid., p. 656.

[31] Ibid.

[32] Ibid., pp. 660–661.

[33] Minutes of the meeting at Santa Fe, N. Mex., October 1955, Governor's Interstate Indian Council, p. 35 (in the files of the Wisconsin Legislative Reference Library).

[34] Ibid., pp. 35–36.

The new committee was chaired by the Attorney General. A State senator and two assemblymen from adjoining counties represented the legislature. Members of the concerned county boards were also included on the committee. Three members of the Menominee advisory council and representatives of seven State agencies completed the committee.

The first meeting of the study committee was held more than a year after the enactment of the bill. During this interval virtually nothing had been accomplished. In the next year and a half the committee was relatively active, meeting eight times. Advisory groups reporting to the committee held frequent meetings both in Madison and on the reservation.[35]

From the beginning, the University of Wisconsin was deeply involved in the study. The legislative resolution requested the university to "cooperate with the committee to the fullest extent possible." In response, the university president appointed an advisory committee under the chairmanship of Professor Fisher of the sociology department.[36] Professor Fisher was given a full-time assignment to the committee, and, by the time of its first meeting, he was at work organizing study committees of faculty members and outside experts.[37] The early studies were to focus on the problems of local government, tribal economics, and business organizations.[38]

A very ambitious research job was projected by the committee. By using university and State department personnel, the cost was to be held to $20,000.[39] The State government provided half the necessary funds, and the tribe agreed to provide the remainder. Although this was an excellent bargain, the climate of opinion on the reservation and the state of Menominee finances made it very difficult to obtain the money. The project was delayed by the need to meet this small budget.

In late 1955, the committee had still not obtained the necessary funds. The tribe's attorney argued that Congress should finance termination. He was "hopeful that the $10,000 requested would be forthcoming eventually."[40] "I hope," he told the committee, "you will assemble your best techniques in pressure and be sure the U.S. Congress assumes its full obligation in carrying out this decision it has made."[41]

The financial difficulty delayed the beginning of the studies. In November, the attorney general spoke of the need to prod the university faculty members who "may not be giving the priority to these things we might think they require."[42] The university studies could only be conducted on a part-time basis, and State departments progressed slowly. Department heads often came to meetings only to again report that work was underway and would soon be completed. Virtually everyone involved in the planning held a full-time position presenting him with constant demands, both more pressing and more rewarding than the work of the Menominee study committee.

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[35] Wisconsin. Legislative Council, report, 1957, I.I.I. (Madison : 1958), p. 133.
[36] Ibid., p. 131.
[37] Menominee News, Apr. 10, 1955, p. 5.
[38] Legislative Council, report, 1957, pp. 131–132.
[39] Menominee News, Apr. 23, 1955, p. 2.
[40] Menominee News, Nov. 10, 1955, p. 5.
[41] Ibid.
[42] Ibid.

Members of the Menominee Indian Study Committee did not believe that it was their function to prepare a definite plan for the tribe, but rather to conduct research and analyze the various possible courses of action as objectively as possible. The information was to be presented to the tribe, and all decisions were to be left to the Menominees. The committee thus shared with the BIA and the congressional subcommittees the assumption that there was a working political democracy on the reservation and that a series of basic decisions on issues of extraordinary complexity could be left to the general council. The passive attitude of the State government was to result in giving the power of tribal decision to a handful of Menominees and the tribal attorney, who was only too eager to make the tribe's policy decisions. Only where the direct interests of the State were involved was the committee to take a forceful position.

The resolution establishing the study committee directed that final reports be submitted to the legislature by November 1, 1956.[42] This would allow the legislative council to review the committee's proposals and to prepare recommended legislation for the 1957 legislature. The deadline was not met. Reports were incomplete, and it was necessary to delay legislative action until 1959.[43]

The Menominee Study Committee failed to take any position on the 1956 legislative requests of the tribe. The bills provided for postponement of termination and for payment of termination expenses were of fundamental importance to the tribe. The Attorney General, chairman of the committee, publicly criticized the proposed extension as similar to an "almost never due date on a business loan." [44] It was in response to Wisconsin criticism of the bill that tribal delegates decided that it was necessary to accept an early deadline in order to prove their good intention.

Attorney General Thomson became the Republican nominee for Governor. During his campaign he proposed a new solution to the Menominee dilemma. Thomson suggested that large sections of the reservation be purchased from the tribe for a State park.

> Surely the State's responsibility to preserve such exceptional scenic resources would justify such action. Nor can there be any doubt but that these two attractions meet the high standards originally set for State parks. * * *
>
> * * * if it is shown the tribe wants to sell, or developments show that it is best for the Indian community to sell, it would be "desirable" for the State to purchase the whole reservation area and dedicate it to public enjoyment in perpetuity * * *[44]

This proposal was to awaken fears that the State wanted to take over tribal lands. Some Menominees began to see termination as a State plot to gain control of the coveted park sites.

The preliminary reports.—In June 1956 the study committee began to receive reports from the various advisory groups. By late October, reports had been submitted on topics ranging from recreation to agriculture, from land ownership to local government. The crucial report on business organization, however, was not finally prepared until mid-1958. Generally, the reports were mimeographed statements of less than 20 pages outlining the existing situation, listing the broad options available to the tribe, and making some evaluation of the strengths and weaknesses of each choice. The studies made no specific recommendations. "Essentially," says the chairman of the tribal coordinating committee, "they put into writing what everyone already knew." [45]

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[43] Menominee News, June 20, 1957, p. 5.
[44] Green Bay Press-Gazette, Sept. 18, 1956.

The longest and perhaps the most impressive of the early reports was that on county and local government. This report clearly illustrates the methods of the committee.

Early in the report an attempt was made to consider all logically possible types of organization. Those clearly now allowed by State law were eliminated. Thus novel arrangements such as leaving the reservation an unorganized area with no local government or organizing the whole area as a village or city were rejected.[46]

Realistically, the two basic options were to organize the reservation area as a separate county, or to include the area within the jurisdiction of one or more surrounding counties. The report examined the feasibility of the two alternatives. The analysis assumed at the outset termination would bring a sharp reduction in the wide range of community services offered on the reservation. Additional costs, however, would be necessary for the support of the county and town governments.[47]

A basic, unspoken assumption underlay the analysis—that the tribe's choice would be limited to those forms in which the Menominees paid for all services received. For this reason, the option of placing the forest under the State forest crop law was rejected. The low tax rate, it was explained, would produce annual revenue of only $19,500 to meet governmental expenses estimated at $114,900.[48] A higher tax rate was necessary to pay a fair share of county government and school district expenses, unless the State or Federal Governments provided a substantial annual subsidy.[49]

Except for temporary assistance, the study committee assumed that the tribe should pay its own way. In many ways, this seemed a valid assumption at the time the law was enacted. After all, the tribe had been virtually self-supporting, successfully financing a wider range of community services than any other Wisconsin community. There were substantial funds in the Treasury, and the lumber business was making a profit.

By 1956, however, the assumption was no longer valid. Almost 80 percent of the Treasury funds had been spent. For the past 2 years the tribe had operated at a substantial deficit. Tribal business reserves had reached a minimum point for safe operation. No longer was it equitable to deny the tribe the tax benefits of the forest crop law, a law specifically designed for sustained yield forests. The county governments, however, could not afford the burden of providing services to the Menominee people. The State government was unwilling to consider a large new expense, and Congress showed no enthusiasm for long-term assistance. Therefore, the tribe would have to pay its own way.

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[45] Interview with George Kenote, July 17, 1964.
[46] "County and local government * * *," p. 29.
[47] Ibid., pp. 37, 39.
[48] Ibid., pp. 39, 42.
[49] Ibid., p. 49.

Objective criteria for efficient county government suggested that the tribe would be best served by merging with an existing county. The reservation population was less than a tenth that held necessary for a modern county. A separate county would have a smaller population than any existing in Wisconsin, making necessary reliance upon "part-time and nonspecialized employees." Services easily provided in a large county would become luxuries in the lightly populated county with little taxable property.[50]

Inclusion in adjoining Shawano county would be notably more efficient. The county seat was located only 6 miles from the reservation, and the total population would be nearly that required for efficient government. For some time the county had been providing certain administrative and court services to the tribe. The tax revenue which the county would receive, however, would not cover its costs in providing services. "In financial terms," the report concluded, "placement in Shawano is the best of all possibilities for the reservation residents." [51]

Although economic and administrative criteria strongly supported merger, the report cautioned, political factors and the existence of some race prejudice created difficulties. Menominees felt that Shawano officials were unsympathetic and treated them inequitably. Tribal leaders were also concerned by the fact that Menominee representatives would be outvoted at least 12–1 on the county board. People feared that county officials "might build highways through the reservation, inequitably tax or even 'steal' their property through taxation. . . ." [52]

Neither alternative met all objections, but most Menominees would probably support a separate county. This alternative, the report concluded, would provide most continuity with the existing tribal government, would allow more flexibility in dealing with the special problems, and would provide an opportunity for cooperation with the State.[53]

The endorsement of the separate county plan, however, was hedged about with reservations about tribal "readiness for self-government." The prevailing apathy toward politics, the domination by a small clique, and the effects of government paternalism were noted. "No fact is clearer," the tribe was warned, "than that the government of a separate county would not be the tribe under another name." [54] Inheritance laws and the sale of property would inevitably end exclusive tribal control.

No decision was clearly indicated by the report, although many important considerations were clearly and helpfully stated. The most important date in the report, that on financing, was later to prove seriously incorrect. The basic decision was left to the tribe.

Planning and Politics: 1957–1959.—The deadline for submission of a termination plan was December 31, 1957. It was evident by early

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[50] Ibid., pp. 56–57.
[51] Ibid., p. 54.
[52] Ibid., pp. 54–55.
[53] Ibid., pp. 60–61.
[54] Ibid., p. 62.

1957 that necessary research and planning could not be completed in time. Representative Laird submitted a bill requesting postponement.

The membership of the Menominee Indian study committee held divided opinions about termination. The committee never formally opposed the legislation, but, in April 1957, it finally voted to support the tribe's request for postponing the termination date to December, 1960. The resolution endorsing the bill was amended, however, to require submission of the tribal plan by the end of 1958, thus allowing only one additional year for planning.[55] Although some committee reports were still incomplete and the tribe had made no decisions, the study committee felt that 1 year would allow sufficient time.

In Congress, the 1957 bill was opposed by the BIA. The chairman of the study committee wrote to the House subcommittee: "* * * while we have been and are emphatically opposed to an indefinite termination date * * * we feel unequivocally that more time is needed." [56] He reported that two crucial economic studies would not be ready for at least 3 months, and urged that the tribe be allowed time to consider the alternative policies.[57] Later, writing in a similar vein to the Senate group, he charged that the BIA report was "unconstructive, superficial, and ignores grassroot realities." [58]

The study committee reached a somber conclusion in a report written during this period. "Failure to evolve a satisfactory plan * * * would result in disaster as to the best interests of the State of Wisconsin. Expedience and inequity would dictate the future of the Menominee people * * *" [59] The committee reported that it had undertaken an exhaustive research program, but confessed that planning had not even reached the stage of submitting alternatives to the tribal membership.[60] "The length of time required for these numerous studies and decisions," the committee concluded, "cannot be estimated accurately." [61]

The study committee operated within the assumption that termination was a Federal policy and could not be changed. It conceived its function as elaborating and commenting upon the options of the tribe within the context of the legislation, while protecting the interests of the State. It was facilely assumed that the long-range interests of the State and the tribe were identical. Committee members saw the termination program as the result of an agreement between Congress and the tribe. The State committee now had to try to make the best of the arrangement for all parties.

Congress adjourned without taking action on the bill to postpone termination. The final months of 1957 provided a preview of the final stages of the termination process. University advisers, State officials, and the tribal attorney tried hard to put together some kind of tentative plan to meet the statutory deadline. The chairman of the University group requested some simple date about tribal Treasury balances from the BIA, but several months passed before the Bureau provided this essential information.[62] Finally, the tribe submitted a "Progress Report" on the last day.

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[55] Menominee News, May 20, 1957, p. 2.

[56] Letter from Attorney General Honeck to House Subcommittee Chairman Haley, July 15, 1957.

[57] Ibid.

[58] U.S., Congressional Record, 85th Cong., first sess., Aug. 21, 1957, p. 10462.

[59] Legislative Council, report, 1957, p. 133.

[60] Ibid.

[61] Ibid., p. 152.

The important report on ownership and management of tribal assets was belatedly submitted in June, 1958. The brief 15-page analysis enumerated pros and cons of seven forms of business organization ranging from the establishment of a tribal corporation to the sale of the land as a national forest. "The outline," the author explained, "is intended for discussion purposes only, and not as a recommendation for any particular proposal. In fact, it seems likely that the final plan * * * will involve a combination of some of these alternatives * * *."[63] In the report, and in the discussions to follow, economic planning was seen as a matter of legal forms rather than the development of tribal resources. Sometimes these two requirements were virtually equated.

"The job of the Menominee Indian Study Committee," says one participant, "was to keep the heat on the tribe to come to their own decisions." "The biggest problem was to make the Menominees open to information." The committee 'futzed around for years trying to avoid coming to decisions." When the new tribal Coordinating and Negotiating Committee began to formulate the issues for tribal decision, the study committee cheerfully bowed out of the picture. The declining interest of the academic consultants is evident in a letter written to the reservation superintendent by the chairman of the university committee:

> We have not had copies of minutes of advisory councils and general councils for several months * * * nor have I been contacted by any of the Menominees since May. I presume the boys are playing their cards close to their chests these days, and are busy utilizing the services of their attorneys in intensive fashion. In many ways, I view this as encouraging * * * I think that the sign has been given for the university committee to fade out of the picture completely, and I for my part am thoroughly prepared to recommend this.[64]

Dissolution of the advisory group was proposed in early September. "The university's staff and the committee as a group," wrote the chairman, "have by this date made all the contributions to this progress which they have been called upon and equipped to make * * * The detailed and specialized legal, financial and business organization work to be performed for the tribe at this final stage of transition to termination is extensive and goes beyond the functions of the university's staff or its available time and resources."[65] The recommendation was promptly accepted.

While the State government continued its nonplanning, several attempts were made to interject the Menominee problem into State politics during the 1958 campaign. When Congress finally passed a bill extending the termination deadline but limited Federal assistance to 50 percent of tribal costs, the Governor charged Congress with "flagrant betrayal." "Our Menominee Indians, working with the State government have been proceeding with termination plans in good faith, based upon assurances of the original legislation * * *." [66] Democratic leaders quickly responded with a statement asking House Democrats to fight the bills.[67] Representative Laird saw the issue as "just another example of Democrats running roughshod over minority groups." [68]

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[62] Letter from Superintendent Robertson to Commissioner Emmons, Apr. 2, 1957.

[63] "Alternatives for Ownership and Management of Menominee Resources," A report to the Menominee Indian Study Committee, Wisconsin Legislative Council (June 1958), p. 1.

[64] Burton Fisher letter to Superintendent Robertson, Aug. 11, 1958.

[65] Letter from Fisher to university vice president, Harrington, Sept. 4, 1958.

Shortly after the election, Governor-elect Nelson urged purchase of the reservation as a State park.[69] Just 2 days later, Congressmen Laird and Reuss broke into newsprint by announcing their support for conversion of the area to a national park or national forest.[70] Their tribe was not responsive to either proposal. Subsequently, a National Park Service survey found the area unsuitable for a national park, but did recommend incorporation of certain areas in the State park system.

In September 1958, a tribal referendum gave overwhelming approval to a plan to organize the reservation as a separate county. Five months later, in January, the general council completed action on the termination plan with the adoption of a plan for business organization. The tribal plan was then forwarded to the study committee for preparation of a legislative package for submission to the legislature.

Wisconsin Legislation of 1959. A new Attorney General, the third to head the study committee, took office in January 1959, with less than 3 months before the plan was due in the legislature. "The committee," he recalls, "had been in existence almost 4 or 5 years and had made many studies, but no one came out with a plan." [71] The study committee met in January and received copies of the tribal plan. They were not to meet again until late April.

Two men, Professor Fisher and Assistant Attorney General Bowers, were selected to prepare an evaluation of the plan during this period. The 36-page report, together with a thick file of supporting documents, was submitted to the Menominee Indian Study Committee on April 20, 1959. During the next week, the legislation was written. "We had sessions," the attorney general recalls, "which lasted from 8 in the morning until 10 at night, day in and day out, until we hammered out a plan." [72]

The committee did not receive a professional assessment of the plan. "The omnibus plan is large and complex," wrote the consultants, "the issues and problems many. With all the expert counsel we have received, we must frankly confess to have done little better than to have skimmed the surface of these problems." [73] There were, the report argued, fundamental deficiencies in the termination policy. Congress was wrong, for example, in assuming the tribe ready to manage its own property. The BIA thus was to be replaced by private, corporate trustees.[74]

The responsibility of the State was to do its best to insure the future of a group of people who "do not and cannot understand the full context, intricacies, and implications of the huge and complex governmental and economic plan presented to them."[75] Perhaps, however, termination would have good results:

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[66] Green Bay Press-Gazette, May 1, 1958.
[67] Ibid.
[68] Green Bay Press-Gazette, May 1, 1958.
[69] Green Bay Press-Gazette, Dec. 3, 1958.
[70] Green Bay Press-Gazette, Dec. 5, 1958.
[71] U.S., Congress, Senate, "Amendments to the Menominee * * *," pp. 88–89.
[72] Ibid., p. 89.
[73] Bowers and Fisher, p. 13, "Letter of Transmission."
[74] Ibid., p. 4.

> It is an open question whether the Menominees would ever advance socially, economically and politically to "full-citizenship" and all it implies, under their present relations with the Bureau of Indian Affairs. We cannot turn back the clock.[76]

The report concluded that the formidable objections to the organization of a separate county were overbalanced by "certain critical psychological and social values."[77] The consultants urged, however, that the county be established on a trial basis, subject to legislative review after several years.[78]

The economic plan was of central importance, but it was very difficult to evaluate it. Many Wisconsin citizens and officials had expected the study committee to develop an economic plan for the tribe. "These expectations made the committee responsible, but it was a responsibility which it was without authority or staff to execute."[79] "* * * it is our opinion," concluded the consultants, "that information required to make an informed judgment on the economic plan is not yet available."[80] Some modifications were recommended to protect individual land rights and to protect Menominee workers from arbitrary action by the executives of the new corporation.[81]

The recommendations of the consultants met a mixed fate at the hands of the study committee, those designed to protect State interests receiving a more favorable response than those intended to protect individual Menominees. The proposal to establish the new county on a trial basis was accepted, but the suggested supervisory committee to provide expert guidance for the new county was rejected because of its cost. A proposal to protect individual property rights and to charge Menominees only nominal fees for the lots upon which they lived was rejected. Such a plan, the tribal attorney argued, would unfairly reward those who stayed on the reservation. He stated that, "anyone who got anything from the corporation would pay the fair market value for it."[82] This reasoning was accepted by the committee.

The study committee not only was required to deal with a series of complex and confused issues during this week, but it also had to plaster over an embarrassing breach in the edifice of State-county cooperation in termination planning. The very first day of the meeting was marked by an adamant declaration by a spokesman of an adjoining county promising a fight against the establishment of Menominee County.[83]

Agreement to the tribal plan for local government came only after a lengthy battle. The Attorney General kept the group of "more than 30 State, university, county, and tribal officials, as well as a big battery of lawyers and consultants" in constant daylong session for the 4-day period. "He presided," says one observer, "with a firm hand and at the cost of some tiffs during the week. Once he announced that if the committee didn't agree with his own and other staff experts, he would bring their conclusions to the legislature independently." [84]

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[75] Ibid.
[76] Ibid., p. 10.
[77] Bowers and Fisher, report, p. 2.
[78] Ibid., pp. 5–6.
[79] Ibid., p. 11.
[80] Ibid., p. 21.
[81] Ibid., p. 6.
[82] Minutes of the Menominee Indian Study Committee, Apr. 21–24, 1959, p. 52.
[83] LaCrosse Tribune, Apr. 21, 1959.

The report to the legislature was not submitted until April 30, more than halfway through the legislative session. The study committee unanimously recommended the adoption of a series of bills. The legislature was warned that action was necessary before August 1, the deadline at which the Secretary of the Interior would be required to put the Department's own termination plan into effect. The committee requested legislative action in June to leave July for negotiations with the Department.[85]

A crucial provision of the legislative package concerned the establishment of a tax rate for the Menominee forest. The tribal forest could not be entered under the forest crop law because it would then fail to produce the necessary revenue. On the other hand, the operation could not bear the full property tax rate. Since the requirement of perpetual sustained yield management reduced the forest's market value by more than 60 percent, the study committee recommended assessment of the forest at 40 percent of its clear-cut market value.

The legislature was assured that the proposed local government was feasible. It was reported that the difficult issue of public schools had been settled, provided that Congress granted $375,000 in transition costs. Similarly, the committee asserted that the chronic problem of medical care could be met. A tribal hospital which fell far short of State standards was optimistically characterized as "modern, well run"; even more optimistically, it was asserted that the hospital could be run on a fee basis, if only Congress would provide $50,000 working capital. A supporting document submitted by the tribal attorneys bordered on fantasy. "The tribe," the legislators were told, "takes pride in reporting that it is asking no special financial help from the State, either presently or prospectively." [86]

The hottest issue promised to be that of county government. In January, a university consultant had issued a supplementary report questioning the feasibility of a separate county and urging amalgamation into a neighboring county, with special provisions to protect tribal rights.[87] The tribal attorneys, however, argued that the additional cost of 10 to 15 percent was justified because neither the tribe nor the county desired a merger.[88] The Shawano County board unanimously supported the tribal bill, having no desire to assume an unpredictable and possibly expensive responsibility. A county representative assured the legislature that "there were 'extremely able people in the Menominee Tribe' who could conduct 'government as we know it as well as they have tribal affairs.' " [89] Certainly this was a truism.

The legislative package came under heavy fire both in the assembly and in the senate. A Green Bay reporter wrote in mid-June of substantial opposition in the lower house. "Skeptical questioning by members of the assembly judiciary committee at a conference with the tribal chieftains Wednesday hinted broadly of serious doubts among leading legislators." [90]

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[84] Green Bay Press-Gazette, Apr. 24, 1959.

[85] Wisconsin, Legislative Council, Menominee Indian Study Committee, memorandum to the legislative council as to Menominee Indian Reservation and proposed legislation (Madison: Apr. 30, 1959), pp. 1–3.

[86] Menominee Indian tribal attorneys, "Questions and answers on proposed legislation, bills 598, S, and 600, S, Joint Resolution 62, S," report to the Wisconsin Legislature, May 25, 1959, p. 3 (mimeographed).

[87] Bowers and Fisher, report, p. 2.

[88] Menominee tribal attorneys, p. 6.

[89] Milwaukee Journal, June 11, 1959.

Senate opposition, however, was to prove far stronger. Senator Trinke, chairman of the powerful committee on labor, taxation, insurance, and banking, held up action for several weeks, insisting that the tribe accept several amendments to its business plan. Trinke believed that the Menominees had been tricked into termination and that the law abrogated tribal treaties. He agreed to consider the bills only after both Wisconsin Senators had assured him that there was no chance of amending the law in Congress.[91] He adamantly refused to approve a plan which would allow tribal assets "to go down the drain." He was afraid that within 10 years the tribe would be on relief and "the timber barons will have moved in to take over." [92]

On July 1, the senate committee unanimously voted to report the county bill to the floor with a recommendation that it be killed. The legislative package was seriously threatened.

That very evening the senate and assembly committees held an informal joint meeting to "consider amendments to the county bill to make a better bill of it." [93] Trinke refused to act unless the legislature passed his resolutions asking an extension of the deadline and demanding Federal assistance for State expenditures in implementing the law. After heated disputes, the meeting agreed to Trinke's conditions.[94]

Senator Trinke withheld committee action on the plan until the tribe finally accepted his amendment forbidding the sale or mortgage of tribal property without the consent of the State government. This provision neatly wiped out the last vestige of tribal control which the plan had retained. The Assistant Secretary of Interior telegraphed: "We think the proposal unfair and discriminating against the Menominee's property rights in a manner not applied to other Wisconsin citizens." [95] The chairman was unmovable, however, and the tribe was forced to accept the measure.

The senate committee also added an amendment favorable to the tribe. The State investment board was authorized to invest State funds in Menominee securities to keep them off the open market.[96] The language of the measure, however, was permissive rather than compulsory. When Menominee bonds eventually came on the market the investment board refused to risk State funds.

Two days before the legal deadline, Governor Nelson signed the State legislation into law. "Since the Federal Government was determined to terminate its own responsibilities," he said, "it was up to the State to bend every effort in helping the tribe to determine a sound and workable plan." The bills, he said, "offer maximum protection of the tribal assets against dissipation or exploitation and at the same time preserve the individual and the group rights of the Menominees." [97]

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[90] Green Bay Press-Gazette, June 18, 1959.

[91] Memo from Superintendent Robertson to area director, July 6, 1959.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] Green Bay Press-Gazette, July 11, 1959.

[96] Hart, p. 187.

[97] Wisconsin, Executive Office Press Release, 2:30 p.m., July 30, 1959.

The legislature also approved unanimously two important resolutions drafted by Senator Trinke. The first requested tribal funds for certain transitional expenses. The second stated a basic opposition to the termination policy and requested its repeal. Contending that tribal assent had been "obtained by duress," it insisted that the Federal Government was responsible for the tribe. The tribe would not be ready to assume full responsibility until its "general educational level" was raised substantially.[98]

> Whereas past experiences of independent and unprotected American Indians losing their goods, lands, and resources by the device or artifice of the unscrupulous are legend and furnish a shameful pattern of what can be expected and what might happen to the possessions of the Menominee Indians: Now, therefore, be it
>
> *Resolved by the senate* (*the assembly concurring*), That the Legislature of the State of Wisconsin requests the Congress of the United States to repeal or amend Public Law 399, so as to retain and continue indefinitely Federal supervision, until such time as the Menominee Indian Tribe has achieved a status comparable and equal to the average citizen of the environs, and until the tribe has initiated a request for termination of tribal status and such request has been approved by an official vote of the enrolled members of the tribe.[99]

Thus, at a belated date, Wisconsin joined a number of States officially opposed to termination.

Postscript.—Termination was now less than a year and a half in the future. During this period the elaborately contrived plan continually threatened to come apart at the seams. The financial slump in the timber market deepened, and the ability of the tribal industry to absorb the cost of local government services became increasingly doubtful. Other arrangements broke down. The tribe had been unable to finance necessary improvements to keep the hospital running and no outside group was found willing to assume responsibility. Most serious, however, was the collapse of the arrangement to provide public education by joining the Shawano School District. In May 1960, the Shawano School Board reversed its previous acceptance of this arrangement, contending that the amount of assistance allowed by HEW for transitional costs was adequate. These problems were compounded by the tribe's failure to take prompt action in implementing the termination plan.

During this period the Menominee Indian Study Committee was relatively inactive. Its major function completed, the committee held only two meetings in the 1959–61 interim. The only legislation recommended to the 1961 legislature dealt with relatively minor matters such as the administration of the tribal loan fund, and the provision of an advisor for the new county government.[100]

Tribal inability to meet the deadline resulted in the introduction of another extension bill. The amendment received strong support from

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[98] Wisconsin, Legislature, Joint Resolution No. 79, 1959, as quoted in U.S., Congress, Senate, "Amendments to the Menominee * * *," pp. 31–32.

[99] Ibid., p. 32.

[100] Wisconsin, Legislative Council, general report—III (Madison, 1963), p. 85.

Wisconsin officials. The Governor endorsed the measure as did the education, welfare, and health department. "When the tribe becomes independent," Senator Proxmire testified, "it will have to conform to the requirements of Wisconsin codes and statutes. Both the tribe and the relevant enforcement officials will be faced with an unmanageable task if required facilities are not ready to operate when Federal trusteeship ends. . . ." [101] The Senate subcommittee received telegrams endorsing the bill from the Lieutenant Governor and the attorney general endorsing the bill. Senator Proxmire presented the State's case, calling the legislation "an absolutely essential minimum".[102]

Congress reluctantly granted 4 months additional before final termination. If these deadlines were not met, the law directed the Interior Department to immediately appoint a private trustee for Menominee property.

In September, the State commissioner of administration urgently appealed to the Wisconsin Board of Government Operations for $10,000 to assist the tribe in organization of the county and the corporation. He predicted that "disaster" might result from inadequate tribal preparations for termination. The Commissioner, commented a reporter, "expressed publicly a worry that many State officials have had privately—that when the termination deadline comes the Indian community . . . will be unprepared for independent community existence and self-reliance." [103]

Tribal delay in implementing the business plan increasingly concerned the State government. In early 1960, the Menominee Indian Study Committee dispatched a member of the attorney general's staff to work with the tribe for the next 6 months.[104] At its meeting the study committee heard reports that the lumber market slump would lower corporation earnings to less than one-third the projected level. County costs, on the other hand, were to be substantially above estimates. "Members of the committee," writes one observer, "were plainly apprehensive that the effect of termination would be to transfer financial responsibility for the Indian community to the neighboring counties and the State treasury." [105] An assemblyman made a motion endorsing congressional action to further delay termination, arguing that "the State of Wisconsin is due for an awful headache." [106] The motion carried.

Only after repeated requests by Wisconsin's Senators and by Governor Nelson did Senator Anderson finally agree to hold a hearing on the amendment. Anderson promised the Governor a hearing, "but conspicuously failed to commit himself to support another extension." [107] Nelson did not feel "especially optimistic" after his discussion with the Senator. He conceded that the right-year trial period desired by the tribe, was "unrealistic", but he promised to work for a 1- or 2-year postponement.[108]

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[101] U.S. Congress, Senate, "Hearings, 1960 amendments * * *," p. 35.
[102] Ibid., p. 42.
[103] Green Bay Press-Gazette, Sept. 15, 1960.
[104] Green Bay Press-Gazette, February 1961.
[105] Ibid.
[106] Ibid.
[107] Green Bay Press-Gazette, Mar. 21, 1961.
[108] Ibid.

Senate hearings were scheduled less than 2 weeks before the termination deadline. An impressive State delegation, headed by the attorney general, supported the legislation. State testimony, however, was badly organized. The tribal attorney, who had been selected to present the case for temporary Federal subsidies, painted an extremely optimistic picture of the future of the tribal economy and promised that further assistance would not be required. He was questioned closely about the power of the trust company in the new business organization, and the committee did not like what it was told. Subcommittee members questioned the attorney general in a similar manner, raising pointed questions about the new county. Testimony of State officials revealed that the tribe was not permitted to organize its business under the forest crop law because of State insistence that the tribe pay all of its own expenses and because the State desired stricter controls over tribal business practices than were provided in the law. The highly critical reaction of the subcommittee is illustrated by the following exchange:

> Mr. REYNOLDS. * * * the forest crop law would not provide enough revenue to take care of the Indians themselves. That is the fact.
>
> Senator ANDERSON. We are trying to keep the costs down, not to gig them.
>
> Mr. REYNOLDS. We are trying to make sure that they can live as decent American citizens. One thing is that they have to learn to take care of themselves.
>
> Senator ANDERSON. Do I understand that it is your testimony that the reason you reject the forest crop law is that it doesn't take enough money out of the Indians?
>
> Mr. REYNOLDS. They have to learn how to support themselves.[109]

Congress rejected the attempt to extend the termination deadline. One week after the last hearing, the Menominee reservation passed out of existence and the abortive experiment of Menominee County began. Around Wisconsin many congratulations were expressed for the fine work of the Menominee Indian Study Committee. It was said that the new county might provide a new pattern for the development of Indian policy. Few say so today.

CHAPTER 6.—TERMINATION IN RETROSPECT

The termination policy arose from an attempt to help the Indian people. The new policy expressed the convictions of congressional experts with long experience in the unendingly frustrating work of the Indian affairs subcommittees. Building upon the recommendations of the Hoover Commission, the policy had the support of two consecutive Commissioners of Indian affairs. Discontent had been rising for years, both within the Bureau and in Congress. The desire for a change in policy found concrete and forceful expression in the work of Senator Arthur V. Watkins of Utah.

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[109] U.S., Congress, Senate, "Amendments to the Menominee * * *," p. 97.

By background, by temperament, and by deep religious conviction, Senator Watkins was a conservative man. He shared the conservative antipathy to governmental control and direction of human lives, and he abhorred the attitude of bureacractic paternalism. The most fundamental freedom, he believed, was freedom from government. He exalted individual initiative and private property; and he looked with deep suspicion upon a policy putting group interests before those of the individual.

A respect for private property, a negative attitude toward government interference, and a vague "individualism" are values shared by most Americans. Expansion of freedom is a common goal, but there are different interpretations of freedom. Liberals tend to emphasize freedom from restrictions upon rights fundamental to democratic politics, while conservatives place a higher value upon freedom of property. These two interpretations, however, were not often differentiated in discussions of termination. Senator Watkins appealed for more freedom for the Indians, and his colleagues were willing to be convinced without examining the issue too closely. Necessarily implicit in the termination policy, however, was the conservative emphasis upon the sovereign importance of private property.

A wealth of experience and information was available to Congress and to the Indian bureau. It was easy for the people in Washington to feel that they had complete information. The information available, however, was selected and interpreted in terms of a conservative viewpoint, thus supporting a series of assumptions upon which the new policy was built. The policy if intelligible only in terms of these assumptions:

> 1. That the more advanced Indian groups had achieved basic social progress, and that they now lived at a level comparable to a great many non-Indians.
> 2. That no important "cultural" differences existed between the advanced Indian groups and other population segments, and that the Indians would respond to economic opportunity in the same manner as had other groups.
> 3. That many of the most important service functions for these tribes had already been transferred to the State government, and thus full transfer would not be difficult.
> 4. That a large number of the Indian people were in favor of an end to Federal trusteeship.
> 5. That the bureaucracy of the BIA was stiflling the development of individual initiative and the economic development of tribal resources by its trusteeship.
> 6. That Indian tribes largely self-sufficient under Federal supervision could easily meet the expenses of governing themselves under State law.
> 7. That the Indian communities were unified and had democratic institutions by which they were capable of making basic decisions for their own future.

These assumptions were accepted at face value. A radical attempt to reconstruct an Indian community through consistent application of traditional conservatism was seen as merely a sensible reaction to the facts. Thus the policy did not become the subject of partisan debate.

Legislation involving the future of a few thousand Wisconsin Indians was too small a matter for the attention of the entire Congress. It was abdicated to a subcommittee, most of whose members held their seats only for the purpose of safeguarding important local interests. There are few political rewards in Indian affairs legislation, and decisions are left largely in the hands of the subcommittee chairman. Chairman Watkins brought to this position not only skill and experience, but also a firm commitment to a definite policy. He succeeded in making a complex policy simple and universally agreeable by explaining it to less concerned members in terms of ending Indian wardship and granting Indians full rights of citizenship.

Much time has been devoted to a reconstruction of the legislative and administrative history of the Menominee termination legislation and to a study of the response of the tribe and the Wisconsin government. It is now possible to evaluate the validity of the assumptions underlying termination of the Menominee Tribe.

It was assumed, in the first place, that the Menominees had progressed socially to the extent that they were prepared to assume the responsibilities carried by the non-Indian citizens of Wisconsin. In certain respects, indeed, obvious progress had been achieved. The Menominee level of education approximated that of neighboring counties, and the average tribal member had an eighth grade education. A crucial fact obscured by this comparison, however, was the total lack of professional training among tribal members. Skills essential for community life were not available among the Menominees.

BIA figures also showed the income of the average tribal member to be comparable with that in the surrounding counties. It was not mentioned that the size of the average Menominee family was far larger, and thus the individual standard of living was substantially lower. Nor was it explained that the counties upon which the comparison was based were made up of cutover timberland which could support only marginal farming operations. The quantitative figures failed to show another important fact. There were no local business leaders, and all important management was in the hands of outsiders. The Menominees were certainly highly advanced when compared to other Indian groups, but they were far from possessing the skills and experience necessary to successfully run the timber operation and the local government in the manner of other Wisconsin communities.

A second assumption was that there were no cultural differences between the Menominees and other minorities which would hamper tribal response to the opportunities to be offered. Neither the Congress not the BIA concerned themselves with the problem of culture, and certainly there remained relatively little of the aboriginal culture in any visible terms. Only a few practiced the ancient religion or spoke only Menominee, and only this small group was significantly different from the white population in psychological makeup.[1]

During a long period of dependence upon Federal supervision, however, reservation life had developed a system of values and expectations of its own. Tribal members were not accustomed to making their own decisions, and they had grown to expect a wide variety of services without charge. People expected to be given jobs in spite of their poor work habits. Only a small elite shared the middle-class values common to a small town. Few of the Menominees had any drive to save and invest in order to improve their economic status. Most were satisfied as long as they could support themselves. There were things more important than money.[2]

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[1] Spindler, "Sociocultural and Psychological Processes * * *."

In another important respect the inherited culture created enormous difficulties for the tribe. The real and imagined cultural divisions within the tribe became a source of cleavage, dividing the tribe into antagonistic factions. Although formal community power was in the hands of the middle-class reservation elite, the opposition was so constant, so bitter, and so totally hostile that there was no chance to maintain the fundamental community unity necessary for deciding the tribe's future.

The great bulk of the Menominee people show evident effects of the "reservation culture". Apathetic toward tribal government, they always expected care when they were in need. Unaccustomed to planning for the future, these people could be depended upon to vote for the policy providing an immediate personal advantage, rather than that in the long-range interest of the tribe. Because the general council was supreme in tribal government, it was often this group which set the tone of tribal politics.

A third assumption underlying the termination policy was that the State government had already assumed many of the major functions of governmental services for the tribe. Actually, the State's role in 1954 was limited to providing education for a portion of the children under Federal contracts and providing assistance in certain health and welfare cases. In most respects, the reservation area was almost totally separated from Wisconsin government. The State had no jurisdiction over the tribal forest, and State industrial standards did not apply to tribal enterprises. The State did not possess legal jurisdiction over the reservation area, and tribal waters were closed to Wisconsin sportsmen. The tribe operated its own hospital and utilities, and they did not meet State requirements. The Menominees were exempt from virtually every form of State taxation. Integration into the system of Wisconsin government was to be an operation filled with complexities.

Some of the proponents of termination did not wish to rely on force and felt that tribal consent was important. It was assumed, in the BIA and in Congress, that many or most of the Menominee people favored withdrawal of the Federal Government. The joint subcommittee was told that the tribe had voted to support a termination bill. It was not explained, however, that this vote took place after Senator Watkins told the tribe that they could not receive their funds unless they approved the bill, and assured the members that the law would soon be passed whether they agreed or not. In 1953, Watkins secured Senate passage of a harsh termination bill. Many Menominees saw the issue as either accepting the Watkins bill in the next session or submitting a substitute measure more favorable to the tribe. At this time, no one in the tribe had the faintest idea of the implications of termination.

Fear and opposition to termination within the tribe were masked for several years by the continued political dominance of the middle-class elite, the group which had least to fear from termination. Under elite leadership, the tribal government adopted a strategy of attempting to comply with the legislation, demonstrating the tribe's good intentions in order to obtain necessary State and Federal assistance. Only as the final deadline approached did the dominant political leader meet defeat, and only at this point was the strategy of compliance repudiated. There is no evidence that the majority of the Menominee people favored termination at any time.

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[2] Ames and Fisher, p. 106.

One of the assumptions was undoubtedly true. The policies of the BIA did stifle individual enterprise and tribal economic development. Bureau services did encourage people to remain on the reservation. The attraction of the beautiful land was enhanced by a virtual guarantee of work, free land for home sites, no taxes, free health care, year-round hunting and fishing, and the provision of some relatively good jobs for talented men. Some Menominees who undeniably possess the capacity to make a successful adjustment to city life have felt little desire to leave the reservation for the tensions of urban living. While much was provided, however, the fact that property could be neither sold nor mortgaged made it very difficult to obtain the necessary capital for small business.

Development of tribally owned resources was also retarded. Operating within a tight national budget, the Bureau apparently adopted the policy of Menominee self-sufficiency as an end in itself. Tribal funds were indeed sufficient to meet the costs of community services, but the tribe lacked the resources necessary to undertake major capital development. The BIA never conducted a systematic survey of tribal resources. Even during the period preceding termination, no plan for economic development was prepared. When the tribe received a large Court of Claims award, the Bureau rejected a proposal providing substantial funds for economic development and began to apply strong pressure for termination. The Bureau was either unable or unwilling to provide substantial assistance in the development of tribal resources.

The critique of BIA policies was valid, but implicit in the criticism was the assumption that the conditions would be self-correcting if only the Bureau's power were removed. Withdrawal of Federal authority, however, would do nothing to provide the tribe with needed capital. Nor would termination suddenly turn the Menominees into small entrepreneurs. Most tribal members were adjusted to life under Federal paternalism. Few valued work in itself or the accumulation of money. These were attitudes that could not suddenly disappear. Only the most naive could assume that a sudden shift of Federal policy with no preparation or training of tribal members could radically alter the Menominee pattern of life.

An assumption central to the Menominee Termination Act concerned tribal finances. Since the tribe met the costs of reservation government, it was asserted that the expenses of running an independent community could be easily carried. Soon after termination it became evident that this assertion was seriously misleading. Even with the elimination of such services as health care, free utilities, and parochial education, the projected budget for the new county showed increased expenditures of 50 percent. Moreover, large expenses were necessary to bring community and industrial facilities up to State standards. The costs were far greater though the services were far less.

Although the tribal economy was almost totally dependent upon the lumber market, no allowance was made for market fluctuations. It was implicitly assumed that the lumber market would remain stable. By 1958, however, the market had sharply declined and the tribe's inefficient operation was seriously threatened by stiff competition. Tribal income went down, unemployment increased, and welfare expenses rose. With only a small reserve, the tribal business was in a highly exposed position.

The Indians were said to be "ready for freedom." It was assumed that the tribe was unified in a workable community, possessing both the democratic institutions and the leadership necessary to allow genuine community decisions on matters basic to the tribe's future. This assumption was shared by Congress, the Bureau of Indian Affairs, and the Wisconsin government.

The "leaders" of the Menominees were assumed to speak for the tribe in much the same way officials of a small town speak for the community. There was little awareness of the crucial cultural and factional divisions within the tribe, or of the fact that the tribal spokesmen were members of an elite quite removed from the main body of the people in many respects. When protest arose, the tendency was to accept the explanation of the leaders that the opposition was only a handful of "radicals." Actually, most of the people were deeply worried about termination and distrustful of tribal leadership.[3] They lacked confidence, however, in their ability to change decisions that seemed "cut and dried," and retreated into apathy. The small group of tribal members openly in opposition were hopelessly divided among themselves and without effective leadership. Thus a few people representing a socioeconomic elite were able to speak for the tribe in an authoritative manner and have their decisions accepted. Fundamental consensus, however, did not exist. It was a primary objective of each action to get the others completely out of Menominee community.

Since tribal government was created in the 1920's some progress had been made, but there was no tradition of real governmental responsibility. The clumsy and fragile mechanisms of tribal government had been constructed to provide advice on normal governmental functions on the reservation. They were wholly unfit, both in structure and tradition, for the assumption of full responsibility for basic decisions of great complexity. Even before termination, tribal leaders had to battle suspicion and caustic criticism. Only because the councils had little real power and most of the people were apathetic, could the government function with some success. Once the issues became fundamental to the entire future of the tribe, the underlying antagonisms were quickly to find political expression.

Basic to all of the assumptions was the belief that the information available to the subcommittee and the BIA was both correct and essentially complete. This belief was wrong, and was at the root of many mistakes made in termination. The BIA possessed a great deal of gross statistical information relating Menominee characteristics to those of the surrounding population and to other Indian tribes. The statistics, however, omitted crucial qualitative considerations. Although the comparisons with other tribes showed the Menominees to be in a more favorable position, the Bureau actually needed not comparative data but information about the total demands which would confront the tribe after termination. This information was never obtained. In Congress, the problem was even more serious. Once Senator Watkins became committed to the termination policy he treated new information as irrelevant. Once the subcommittee authorized major appropriations for termination, they were unwilling to consider the possibility that a fundamental mistake had been made.

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[3] Ames, pp. 6–11, and Ames and Fisher, p. 103.

The termination act was based upon a series of false assumptions. Acceptance of these assumptions led Congressmen to believe that certain goals of the legislation could be attained. These basic goals can be stated as follows:

1. The acceptance of the full rights and responsibilities of American citizenship, particularly the economic right to sell or mortgage property and the economic responsibility to pay taxes.
2. The ending of all Federal control and the transfer of remaining governmental responsibilities to the State and local level.
3. The rapid and complete assimilation of tribal members into American society.
4. The reduction of Federal expenditures.

To evaluate the extent to which these goals have been realized, it is first necessary to pick up the threads of the story. The primary focus now will be on the Menominee Reservation. Congress took no important further action. The official responsibility of the Bureau of Indian Affairs came to an end with termination; the files were closed and the matter was discussed only in occasional letters. The new Indian Commissioner had been involved in termination planning, and the Bureau became very defensive about the policy. The intermittent actions of the State government were important, but they will be discussed here in terms of their impact upon the Menominee people.

The Menominee Tribe: 1959–61.—The passage of the State legislation implementing the termination plan was greeted on the reservation with predictions of success and with fears of disaster. Divisions within the tribe had become increasingly bitter, and were to seriously undermine the attempt to fulfill the plan. Many Menominees were confused and could not understand what was happening. "What will become of us?", asked one man "The politicians got all our money and are working with the Government to terminate us Indians."[4] People were worried about bankruptcy and about the possibility of losing their property through taxation. They were concerned about the security of their jobs, and troubled by the divisions which plagued the tribe.[5]

People were confused and worried, and the support for those who had fought termination grew rapidly. Tribal leaders were accused of fraud, and there were even threats to burn their homes. Again and again the demand for throwing out the non-Menominees was made.[6] Many talked of a lawsuit challenging the violation of Menominee treaties. There were even "grandiose schemes to sell the reservation to the Russians, to make a treaty with the Russians against the United States, or to ask the Soviet Union for economic aid."[7]

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[4] Edgerton, p. 14.
[5] Ames, pp. 6–11.
[6] Edgerton, p. 14.
[7] Ibid., p. 15.

Some members of the tribe expressed their worries by appealing for assistance to high Government officials. One man, for example, wrote a long handwritten letter to the President, telling him what was happening and asking that he not show it to anyone else. The letter was answered by a Bureau official.[8] Another wrote to the Attorney General requesting an "investigation" of tribal enrollment.[9] Senator Wiley and Commissioner Emmons received several letters charging fraud, claiming that Mr. Frechette was not a Menominee, and demanding re-enrollment.[10]

As tribal leaders studied the termination plan, it became evident that further legislation was needed. Studies which began at a late date showed an urgent need for upgrading community facilities and for obtaining capital for economic development. There was a great deal to accomplish before termination, and an extension of time would be helpful. Tribal members were agreed about these needs, but a serious argument developed over the relative priority of the various requirements.

In early 1960 the general council elected a tribal delegation and sent them to Washington with instructions to work for an extension. The delegation was dominated by three experienced tribal politicians under the leadership of Advisory Council Chairman, James Frechette. After talking with BIA officials and Members of Congress, the delegates decided that it was necessary to sacrifice the goal of a postponement in order to obtain other assistance. The most urgent requirements, they decided, were the subsidies for the new county's education, health, and welfare programs. "To ask Congress for an extension of time at this time," said Frechette, "would jeopardize our chances of success on these three bills."[11]

Action on the legislation was not scheduled immediately, and the delegation was called home for a report to the general council. The delegates explained the strategy they had adopted. After the report "the meeting developed into a bitter session aimed at the three delegates * * * who were accused of substituting their own views for those of the General Council of February 26, in not pressing for a postponement."[12] The delegation was discharged and a new group elected. Firmly committed to a postponement, the new delegation contained two members who had consistently fought termination. James Frechette, a major power in tribal politics through much of this period, was now repudiated by the tribe.

Many Menominees now accepted the assertion that termination was the result of a conspiracy by some of the elite leaders. Frechette was to be used as a scapegoat for future failures. Returning to Washington, one of the new delegates blamed the difficulty in obtaining the extension on Mr. Frechette. "Now, ladies and gentlemen," she said, "one of the most serious things we did face were those letters which Jim Frechette as tribal chairman sent. * * * Each and everyone one of us saw this same thing back in the Green Bay Press Gazette, 'Frechette Opposes Laird's Bill to Delay Termination.' Now, if we did not have stuff like this to buck, maybe we would have had an easy time." [13]

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[8] Letter from John Delabrue to President Kennedy, June 2, 1961.

[9] Letter from Mrs. J. Jeffrey to Attorney General Kennedy, Apr. 30, 1962.

[10] Letter from Mrs. Petacchi to Senator Wiley, Aug. 4, 1961, and letter from Francis Komanekia to Commissioner Emmons, May 11, 1957.

[11] Green Bay Press-Gazette, Apr. 21, 1960.

[12] Robertson, "Chronology of Events * * *," p. 41.

The attack on Mr. Frechette reached a peak after the new delegation had reported his machinations. A motion was made to censure him and remove him from tribal office. The motion was defeated, 47–28, while most of those present abstained. Frechette expressed his deep gratitude, but he was not to run for tribal office again.[14]

This session also saw another significant action. The general council unanimously adopted a resolution asking the Indian Commissioner to send Mr. Kenote to the reservation to direct tribal implementation of the termination plan.[15] Earlier, the tribe had been able to prepare its plan only by abdicating authority to Kenote, a man from outside tribal politics. Now the tribe was admitting its inability to execute the plan without again relinquishing authority.

After Kenote left, one leader argued, there "developed within the tribe several factions working for different objects * * *. They need to get back to work together. The Bureau has made Mr. Kenote available to go back to the reservation to try to accomplish this. I think he has the respect of all the factions. If anyone can do it, in my judgment, he can." [16]

The tribal Advisory Council was still controlled by people whose position had been repudiated by the general council. As bitter attacks continued, progress was paralyzed until the arrival of Mr. Kenote. A petition was circulated and signed by 600 Menominees asking repeal of the termination act. Few came to meeting held to discuss the new county. "Somehow they feel," said one woman, "that if they don't attend the meetings, termination won't come." [17]

The difficulties facing the tribal delegation in Washington were compounded by the attitude of the tribal attorney. Firmly committed to Mr. Frechette's position, he insisted on taking an optimistic view of the tribe's prospects for success. While the delegation worked to gain acceptance of the legislation, the attorney "called our Senator and tried to discourage him against introducing the bill for an extension * * *. He also told the Congressman that the leaders of the tribe were against extension * * *." [18] The new delegates were unable to change the position of the attorney who considered himself far more than a paid advisor to the tribe.

An Advisory Council meeting held during the 1960 congressional recess once again demonstrated the inability of the tribe to deal with the problems of termination. One councilman raised two questions about the business plan: "one, what is being done to work out these problems and get work started on the Corporation, and two, who is going to put that plan into action?" [19] "Here it is," he said, "the 12th of July, and there has been nothing done to get these plans in operation * * *. There has always been talk of letting some Committee do it, but it is very hard to make your bread and butter with your regular job and serving on several committees besides."[20] Fortunately, Mr. Kenote was to arrive in August.

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[13] Minutes of the July 25, 1960, meeting, Menominee General Council, (mimeographed) (in the files of the Menominee Agency).

[14] Robertson, "Chronology of Events * * *," p. 42.

[15] Ibid.

[16] U.S. Congress, Senate, "Hearings, 1960 amendments * * *," p. 70.

[17] Milwaukee Journal, Aug. 11, 1960.

[18] Minutes, July 12, 1960, Menominee Advisory Council, p. 14 (in the files of Menominee Agency).

[19] Ibid., p. 10.

The inability of the Advisory Council to accept the changed situation of the tribe was clearly illustrated by the issue of the tribal hospital. The Council voted to spend $45,000 from very limited funds to keep the hospital open the remainder of the year. Not only did this decision involve fiscal irresponsibility, but it also threatened to destroy an important Public Health Service project. The Public Health Service had agreed to fill the medical care gap until termination by providing a free clinic at no cost to the tribe. This arrangement was only possible because of a BIA assurance that the tribe had no funds to meet medical expenses. The Advisory Council action could invalidate the agreement.[21]

The hospital performed an important and highly visible function, and tribal members often used the facilities even when hospitalization was not urgently required. It was very hard to close the hospital, but the attitude of the Council shows a complete inability to judge the issue in terms of the obvious priorities for the tribe. The pettiness of the discussion shows a total unwillingness to make the hard decisions necessary in the process of readjustment.[22] The next session of the general council was dominated by the same issue.

The Senate Indian Affairs subcommittee finally scheduled a hearing on the Menominee legislation in mid-August. Before the subcommittee, tribal delegates argued for an extension, citing the difficulties in completing all the steps necessary to implement the plan before the deadline and arguing that further economic development was essential to make the plan viable. The present lumber market, it was asserted, would not produce sufficient income to finance local government. It was essential, a delegate testified, to modernize the mill to meet competition, but modernization would take at least 3 years and could cut the work force by over 80 percent.[23] The committee was also told of the deep divisions within the tribe, and of the difficulty in finding qualified men to take the key posts in the new corporation. The delegation asked for only a 6-month extension, but this was only a tactic to allow another attempt to gain a longer extension in the next Congress. When questioned explicitly, the head of the delegation frankly admitted that the tribe would actually need 5 years to prepare.[24] The subcommittee felt that the termination program was being seriously challenged, and the members refused to recommend any further extension. Only later did they reluctantly agree to 4-month postponement.

Mr. Kenote returned to the reservation in August and took charge of the faltering tribal effort to implement the plan. The first important matter before the tribe was the selection of the members of the voting trust, the four Menominees and three outsiders who were to vote the corporation's stock and elect all corporation directors for at least 10 years. It was a job with no salary, promising almost certain recrimination from tribal factions. Many declined the honor of nomination.[25]

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[20] Ibid.
[21] Ibid., pp. 3–4.
[22] Ibid.
[23] U.S., Congress, Senate, "Hearings, 1960 Amendments * * *," pp. 63–64.
[24] Ibid., pp. 66–67.

Mr. Kenote remembers the selection as a "long process of sizing up those with sufficient interest and experience." Names were suggested, and it was then necessary to check their qualifications and to determine their willingness to serve. Kenote found it necessary to "hurt feelings" at the University of Wisconsin, where some faculty members were hoping for appointment. "Professors," he says, "are too fuzzy for this kind of business." [26]

As the selection process neared completion, the December meeting of the advisory council still featured a prolonged discussion about the advisability of organizing the business at all. The council was divided, and new schemes were still being promoted.[27] Tribal elections had turned reservation politics upside down. Frechette did not run, and a new group took control of the advisory council. The change further complicated the task of preparation for termination. "No one can predict," wrote Kenote, "what the moving force will be in the new advisory council." [28]

Kenote was discouraged, and he did not request an extension of his assignment for the last months before termination. He recognized, however, that no one else was likely to provide the needed leadership and agreed to stay if the tribe wished him to.[29] On December 8, the advisory council unanimously voted a "prayerful" request to the Indian Commissioner for an extension of Kenote's services.[30] After some indecision in Washington, he was allowed to stay.

In mid-December, the general council met to consider the nominees for the voting trust. Each of the three outsiders recommended had a background in State government and had been involved in termination planning. The group included the Lieutenant Governor, the chief State forester, and a prominent State senator.

The general council heard a lengthy explanation of the background and qualifications of each nominee. One tribal member promptly demanded an FBI investigation of each man. Many in the tribe were reluctant to elect the trustees and thus admit that termination was actually coming. Some hoped that President-elect Kennedy would support repeal of the termination law. Tribal members finally were convinced by the argument that the only alternative was to accept assignment of the tribe's resources to a private trustee chosen by the Secretary of the Interior. "We are in a basement with only two doors leading to escape," said one man. "One is to go into the single trustee under which the Secretary of the Interior will place us by his own authority if we fail, the other is to select these trustees and begin the operation. . . ." [31] The argument was very similar to that used to gain passage of the business plan—that there was no real alternative. The nominees were approved by a vote of 89 to 4.[32]

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[25] Ibid., p. 72.
[26] Kenote interview.
[27] Minutes, Dec. 1, 1960, Menominee Advisory Council (in the files of the Menominee Agency).
[28] Ibid., p. 31.
[29] Ibid.
[30] Resolution 3, Menominee Advisory Council, Dec. 8, 1960.
[31] Minutes, Dec. 13, 1960, Menominee General Council, p. 26 (in the files of Menominee Agency).
[32] Ibid., p. 32.

The election of the Menominee trustees resulted in a vote of confidence for Mr. Kenote. He led all candidates, receiving the support of 80 percent of those present. Only one of the other three Menominees elected had a background of service in tribal government.[33]

The voting trust held its first meeting on December 30, and Mr. Kenote was elected chairman of the group.[34] Selection of directors was postponed until January. Lieutenant Governor Nash, one of the new trustees, suggested that "there might be a change in congressional policy as a result of the election." Favorable statements by Kennedy and Udall indicated to him that "the administration would look more sympathetically upon Indian problems." [35]

New Year's Day, 1961, was a day for thoughtfulness on the Menominee Reservation. The tribal hospital was finally forced to close its doors. A temporary clinic was set up for the 4 months now remaining before termination. A great deal remained to be done.

The general council met on January 9, and the tribe's final attempt to amend the Termination Act was initiated. A resolution proposed that conditional termination take place, and that the tribe be allowed an 8-year trial period before the arrangement was made final. The State law establishing Menominee County contained such a provision, and the council asked that Congress create a similar arrangement. The resolution contended that the tribe had done its best to fulfill the requirements of the Termination Act, but that the plan was "at best a grand experiment." "The plans for redevelopment," it was stated, ". . . have only recently been completed and necessitate substantial restudy and capital investment now not available from tribal funds. . . ." [36]

> We do hereby and respectfully, and in all good faith, request that the Congress * * * amend the Menominee Termination Act to:
>
> 1. Provide not less than an 8-year period * * * for readjustment of business and governmental affairs * * *;
> 2. Provide exemption from Federal and State direct property taxes for a similar period;
> 3. Provide that * * * the governmental affairs to be conducted according to the forms of State law * * * but not as a totally integrated part of the State government;
> 4. Provide for establishment of a separate stumpage account * * * such funds to be used to defray administrative and other governmental expenses and to develop a reserve fund;
> 5. Provide authority for the Menominee Tribe to borrow Federal funds at reasonable terms and amounts necessary to expand, improve, and redevelop business operations.[37-39]

Mr. Kenote spoke in favor of the resolution. "The plans and laws were carefully arrived at," he said, "a lot depends on the human element. * * *" He told the council that the mill now had the minimum reserve required, and that "with reasonable success we can almost hold that level if we do not have too bad a market. The past month or two," he confessed, "have been scary months." The resolution was unanimously adopted, and legislation incorporating its main features was rapidly introduced in Congress.

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[33] Ibid.

[34] Minutes of the meeting of the trustees, Dec. 30, 1960, Menominee common stock and voting trust, p. 5.

[35] Ibid., p. 4.

[36] Resolution, Menominee General Council, Jan. 9, 1961.

[37-39] Ibid.

The board of directors of the new company was selected in mid-January. Like the voting trustees, these men were to hold office without pay. Unlike the trustees, the majority were to be non-Menominees. Mr. Kenote assembled data, and the directors were selected by the voting trust. Business experience was the primary criterion, and three of the five outsiders were businessmen. The tribal lawyer and a State senator were also selected.[40] The tribal members selected came from the reservation elite, and the choices included James Frechette and two other men long important in the advisory council.[41]

One month later the board of directors held its first meeting. The members were faced with a formidable array of problems to be dealt with in the 2½ months before termination. It was necessary to select officers and management personnel, to bring the plant within State industrial commission standards, to institute workmen's compensation, and to revise the accounting system.[42]

Another difficulty appeared when the Interior Department unexpectedly ruled that the final stumpage payment would not be made. Relying on a technicality, the Bureau decided to stop the payment. Many tribal members had debts to the mill's store which were to be covered by this check. "These," said Kenote, "are examples of things that wreck or retard progress on these terminal programs, which depend so much on good will."[43]

In February, Kenote expressed his concern for the future of the tribe in a letter to President Kennedy. He asserted that the tribal economy had reached "an alarming new low." By the beginning of 1962, he said, the corporation would have a reserve of only $835,000, less than half the funds required for annual operation. "Neither the Federal Government, the State of Wisconsin, nor the Menominee Tribe is in a position to make a decent termination of Federal jurisdiction by April 30."[44]

Inventories accumulated while sales remained low. Less than 6 weeks before termination it was necessary to lay off more than one-third of the workers.[45] The resulting increase in the welfare load and the fact that these men now lost coverage by corporation medical insurance threatened the delicately balanced county budget. The budget was based on an employment figure of 800 jobs, but fewer than 400 were employed at the time of termination.[46]

The county budget was forced to absorb other newly discovered expenses. A testing program found that 21 tribal members had TB and would require treatment at a cost of $75,000. The planners also learned that the new county would be required to pick up a $50,000 bill for care of delinquents.[47] The projected budget was now $600,000. The corporation was expected to earn only $240,000, and its holdings represented 90 percent of the tax base. The county faced a grim prospect as the final delegation left for Washington.[48]

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[40] Robertson, "Chronology * * *," p. 45.
[41] George Kenote, "Progress Report," January 1961.
[42] Kenote, "Progress Report," Mar. 6, 1961.
[43] Ibid.
[44] Milwaukee Sentinel, Feb. 11, 1961.
[45] Milwaukee Sentinel, Apr. 11, 1961.
[46] U.S. Congress, Senate, "Amendments to the Menominee * * *," p. 80.
[47] Milwaukee Sentinel, Feb. 11, 1961.

A hearing was finally scheduled before the Senate subcommittee. Testifying a week before the scheduled termination, the new tribal chairman asserted that the tribe had been seriously misled in accepting the termination plan. Menominees were "led to believe that this plan certainly would work and there was no gamble connected with it. However, we found since then that the facts are that this is a big gamble. When we started off * * * we were told the proposed county would cost us $380,000. Now we find that it is going to cost us close to $600,000 per year." [49]

Only within the past months had the information on industrial development, education, health, and welfare been assembled and made available to the leaders. On the basis of the data, the chairman concluded, "there is no question * * * that we just cannot make it financially." [50]

The lumber market was unfavorable, and the tribe's sales were down 50 percent. "We have a big inventory, probably about three times as much as any of our neighboring mills carry. * * * We are in a position where we have to curtail our business. We just don't have room to put in any more lumber." [51] The mill had been operating at a loss for the past 4 months.[52]

Members of the subcommittee expressed their concern. Some blamed mistaken tribal decisions, others criticized the attitude of the State government. The members showed no willingness to reassess the basic policy or to accept responsibility for the grave and persisting problems which had been revealed. The committee took no action. One week later, the Menominee Tribe was terminated.

MENOMINEE COUNTY: THE FIRST 3 YEARS

After 7 years, termination was a fact. The corporation received a deed to the tribal assets. The reservation now became Wisconsin's 72d county. Today, 3 years later, it is possible to look back and to attempt an assessment of the experiment. The record of this period will be examined in terms of each of the four fundamental goals of the legislation.

Property.—The most basic objective of the legislation was the full assumption by tribal members of the economic rights and responsibilities of other American citizens. The tribe was to be given control of its own property, and the individual members were to be granted the right to sell or mortgage their property, thus obtaining capital necessary for progress. Well before the time of termination, however, the Menominees had agreed to turn working control of the corporation holding tribal assets to outsiders, and the freedom of the tribe had been severely limited by State and Federal regulations.

The problems faced by the Menominee Enterprises, Inc., were huge. The firm inherited a 50-year-old plant. The BIA had done nothing to make needed improvements, and the problems were simply passed on to the new management. The company had huge inventories and faced a depressed market. From the beginning, it was burdened with virtually complete support of the local government. Termination planning had been based upon a dramatic increase in annual production, but the new managers found that the mill's shipping capacity was "far below that needed for a profitable operation making full use of harvestable timber." [53]

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[48] Ibid.
[49] U.S. Congress, Senate. "Amendments to the Menominee * * *," p. 108.
[50] Ibid.
[51] Ibid., p. 113.
[52] Ibid.

The president of the corporation was brought in from the mammoth west coast operations of the Diamond Match Co., and he brought with him a number of men experienced in western lumbering. These men brought the methods of the large-scale lumbering to which they were accustomed to the Menominee forest. The company was to spend a great deal of money giving the new management a practical education in logging another kind of timber in another part of the country.

The new president felt that the creation of an effective business operation required a revolution in Menominee attitudes and procedures. There had been no cost control system, but now an accountant was employed. New methods were adopted and a strenuous effort was made to persuade long-experienced workers to change their procedures. Those who "couldn't adjust" were replaced. The feeling of tribal members that the mill owed them a job was attacked by a policy of tough management, firing men for infringements which would have been tolerated without comment in the past.

Under the termination plan title to all land in the county was transferred to Menominee Enterprises. The plan did not specify the procedures to be followed in recognizing individual ownership of homesites. Less than 2 months after termination, the board of directors established a policy which was bitterly criticized by tribal members. Land in use for residences or farms was to be "appraised as bare land and offered to the occupants for purchase." [53] Owners of summer homes and other buildings were to be temporarily allowed to use them, but long-term land management plans might preclude their use in the future.[54] Once tribal members purchased their land, they were still not able to freely sell it. The corporation was to retain the right of first refusal, thus powerfully influencing the market.[55]

Although they had been told nothing of it during the consideration of the business plan, Menominees were now required to pay market value for their land. By the end of 1961, 400 homesites had been appraised and offered for sale. Prices ranged from a few hundred dollars to more than $5,000. Very few Menominees had any substantial savings. Some were billed $3,000 for 100 feet of beautiful lake frontage. Although the land was easily worth the price, the question of real value was quite irrelevant to those without a fraction of the necessary money. The corporation allowed for the financial condition of the tribal members by agreeing to accept Menominee Enterprises income bonds at par value in lieu of cash.

At the time of termination each tribal member's share in the common inheritance was translated into corporate terms in two ways. Each member received a 4-percent income bond with a par value of $3,000, and 100 shares of common stock, valueless for the foreseeable future, except in an attempt to gain control of the company. The bond would produce an income of $120 per year, approximately equal to the annual stumpage payments which ended with termination. The bonds were to become negotiable in 1964, while the stock could not be marketed until 1965. Thus, the corporation's land policy proposed to take the only real asset of most of the Indians in payment for what they had thought they already owned, the land under their homes. Bills were sent to each family in February 1962, and by September land had been conveyed to 306 families, most of them assigning their income bonds.[56] Two years later, more than 600 bonds had been used for this purpose.[57]

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[53] Kenote interview.
[54] Annual report, September 1961, Menominee Enterprises, Inc., Neopit, Wis., p. 7.
[55] Ibid.

Landownership was not only offered to Menominees, but also to outsiders. After much discussion, the board of directors decided to allow non-Menominees to purchase land by means of a 40-year lease with option to buy. Consulting engineers carried out a land survey, and a promotion was launched to sell lakeshore lots. The cost of the lots and the requirement that an expensive summer home be constructed upon them, made them virtually inaccessible to members of the tribe. Development of the lots cost much of what was realized by the sale, but it was the hope of the corporation that the project would broaden the local tax base and relieve the tax pressure on the company. The finest river and lake homesites were now closed to most Menominees.

Hard decisions were required if the enterprise was to succeed. In a community much inclined to acrid criticism, corporation officials were met by rapidly growing community antagonism. Mr. Kenote, the highest Menominee official, was in the center of controversy. Extremely unpopular decisions were now held against a man who had earlier been begged to help the tribe and hailed as the one person who could hold the confidence of the various factions. Many now regarded him as a traitor to his people, grasping for personal enrichment. He's really not a Menominee at all, some people claimed, he's part Chippewa and part Negro.

Kenote threw himself into the work of the corporation. He became increasingly impressed by business standards and the goal of efficient operation. "Sometimes," he now says, "I am almost ashamed of my 28 years in government. Government agencies never worry about how much anything costs." [58] His concern for the success of the business has become an overriding feeling, and he has lost much of his sensitivity to the needs of the people. It is very difficult for any man to actively lead the Menominees and to retain the confidence of all. In this period of fundamental readjustments, perhaps it is impossible.

The policies adopted by Menominee Enterprises were indeed hard for the Indians to accept, but the corporation was literally fighting for survival. It was to be the peculiar tragedy of the Menominees, however, that many of the new procedures and costly experiments turned out to be uninformed failures. Tightening of management control did not produce efficiency, but it did give great and irresponsible power over individual workers and the community at large to the executives of the corporation.

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[56] Ibid.

[57] Annual report, September 1962, Menominee Enterprises, Inc., Neopit, Wis., p. 4.

[58] Kenote interview.

The first annual report, for instance, told of a plan to reduce costs by purchasing new logging trucks which were both larger and more efficient than those in use.[59] The trucks, however, were far too large for existing logging roads, and it was necessary to widen the roads. When a new truck was fully loaded, it rapidly proceeded to sink into the roadbed, which had not been built for such great weight.[60]

A similarly arbitrary decision to apply the western method of measuring timber resulted in failure. The valuable hardwood logs had always been measured by a scaling process which encouraged the cutting of timber in the sizes most appropriate for processing into usable timber. Under the new management, the system of weighing logs was instituted. As a result, logs were cut for weight rather than size, and the mill received a great deal of useless material. Finally, the policy was reversed.[61]

The management was intolerant and refused to accept objections to procedures. Some men were fired, and many workers believed that anyone who criticized the management was likely to lose his job. Workmen became afraid to comment, and damage was done to valuable machinery as a result. Conformity was produced, but at the expense of information the management needed. Some employees began to gloat when the executives were proven wrong.

Slightly more than a year after termination, the millworkers voted for unionization. The votes for organization carried by a large margin.[62] Union organizers promised rapid improvements, and the corporation officials had a difficult time reaching a contract settlement within the means of the company. Since termination, the starting salary has increased 15 cents an hour to $1.49.[63] At the present time, the union is threatening a strike unless wages are raised substantially.

When Menominee Enterprises assumed control of the tribal assets, the status of tribally owned utilities had been left in doubt. The decision to dispose of the electricity plant created a heated dispute during 1962. Negotiations began shortly before termination, and the board of directors finally decided to sell the plant to Wisconsin Power & Light for $75,000. Many tribal members were outraged by what they saw as a decision to give tribal property away to an outside monopoly which would soak the Menominees. In August 1962, a group of tribal members unsuccessfully sought a court injunction to halt the sale. The property was transferred on September 1.[64]

Maintaining the tribal plant would have required a substantial capital investment to make necessary improvements. State law also required that a cash reserve be maintained to guarantee restoration of services. Furthermore, the State prohibited the operation of a utility at a loss. The corporation would have been forced to charge very high electricity rates. Wisconsin Power & Light, on the other hand, promised rates lower than those in effect and committed itself to a substantial investment in extending services to new areas.[65] In view of the tribe's limited resources, the decision was obvious.

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[59] Ibid.
[60] Annual report, 1961, p. 5.
[61] Dickie interview.
[62] Ibid.
[63] Annual report, 1962, p. 9.
[64] Kenote interview.
[65] Green Bay Press-Gazette, Aug. 30, 1962.

The question raised an uproar. The four Menominee members on the board of directors opposed the sale. "If only tribal members were on the board," Kenote comments, "the decision couldn't be made." They "couldn't understand the requirements."[66] The division between the Menominee and the outside directors over the electric plant was only one indication of a generally unhealthy relationship. From the beginning, says Mr. Frechette, the whites took the attitude that the complaints of the Menominee members "were just because the Indians don't like the company administration."[67]

As the gulf grew between the Menominees and the outside members, Kenote found himself in a unique position. The division, he says, "was intentionally so—we can't run a political show."[68] Holding the decisive vote in the voting trust and a high position in the corporation, he apparently became the one man trusted by outside members, and the one man without respect among the Menominees.

1962 had been a year of trial for the corporation, and the results were mixed. Log production and shipments were up from the lows of the previous year, but production still fell almost 30 percent below the projected goal. "The last year has had its share of disappointments," wrote the president, "inadequacies in construction that had to be corrected, difficult fitting of new equipment into existing buildings, and the startup problems that invariable accompany installation of new equipment. The lost time attendant to these difficulties, has taxed patience, sometimes worn thin by the compelling wish to get going."[69]

The company president saw 1962 as a "get ready" year, and promised that 1963 would be the "make operate" year.[70] Actually, 1963 was to see the end of his brief but costly career as chief executive. In April, one of the trustees, a Milwaukee judge, finally agreed to hold a meeting to discuss Menominee complaints. At the meeting, the president was asked specific questions, but refused to answer. Subsequently, a directors' meeting was called. The questions were then answered by Mr. Sammond, the former tribal attorney, who was exercising increasing power within the corporation. On December 1, the president suddenly submitted his resignation and left. The vice president was named to succeed him, but he was to last only 6 months. At the time of the first president's departure the corporation reserve was down to $400,000. By February 1964, reserves were below $300,000.[71] The BIA had estimated that $2 million was the minimum safe reserve for the timber operation.

In May 1964, the second president departed, and a battle began on the board of directors over the appointment of a new man. The white members wanted to appoint Kenote, but the "Menominee members were adamantly opposed."[72] Finally, as a compromise, the corporation auditor was named president. Although he has impressed tribal members by his efforts to cut waste and reduce costs, he took office at a very difficult point.

Even with some assistance from the State welfare department, corporation reserves have remained at a critically low level. Each year

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[66] Kenote interview.
[67] Ibid.
[68] Frechette interview.
[69] Kenote interview.
[70] Annual report, 1962, p. 1.
[71] Ibid.
[72] Dodge interview.

Federal subsidies to the county decline 20 percent and taxes must increase. There is doubt about the corporation's ability to absorb these expenses. The company will be able to meet its interest payment this year, but only at the cost of virtually exhausting its remaining reserve. Menominee Enterprises is at the mercy of any important market fluctuation, and has little ability to absorb significant losses.

The future of the corporation is also threatened by the fact that common stock becomes alienable next January. Many Menominees badly need money, and there is every indication that stock will be sold for whatever it will bring. Once 51 percent of the stock passes from Menominee ownership, the voting trust is automatically dissolved, and outsiders could take control of the property. A move will be made at the 1964 stockholders' meeting to postpone negotiability of the stock. Even if the motion is approved, State legislation will be necessary.[73] Obviously, the company is in precarious shape.

The degree to which Menominees feel that termination has given them control of tribal property can be excellently measured by tribal reaction to stockholders' meetings. For the first annual meeting, interest was high, and approximately 200 people were in attendance. Judged by previous standards, this was a large turnout. It soon became evident, however, that the Menominees present could be easily outvoted by the Milwaukee Trust Co., which held the voting trust certificates for all minors and incompetents. The second meeting saw a drop in attendance by 50 percent, and the third session drew only a handful of tribal members.[74]

The major responsibility of the stockholder's meeting is the election of one member of the voting trust each year. The greatest controversy took place when Mr. Kenote's term ran out and he was up for election. Within the tribe, he received only six votes, but the votes of the trust company guaranteed his reelection.[75]

A fundamental goal of termination was to give the Indian people control over their own property. Indians already possessed full legal recognition as citizens, but the legislation proposed to add the economic right to fully control property which had previously been held in trust. The achievement of this objective, it was asserted, would stimulate both personal initiative and group development of resources. The people were thus to be given greater economic freedom, but they would also receive the economic responsibility of taxpaying. Members of Congress argued that only the selfishness of the Indians could lead them to oppose a measure making them responsible for the support of a government they helped select.

The evidence is clear. The Menominees have been given more than ample responsibility but they have gained no significant new freedoms. The inefficient and outmoded sawmill and the poverty-stricken homeowners must now take full responsibility for financing community services. Costs have risen sharply as burdens have been shifted from the State and Federal Governments to the county. It has been necessary to modify facilities and procedures to meet State requirements. The burden is too heavy for the sawmill, and it will increase as

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[73] Frechette interview.
[74] Kenote interview.
[75] Interview with Constance Deer, July 17, 1964.

Federal subsidies are phased out. Already, reserve capital has been virtually exhausted. No funds are available for essential capital investments.

The individual Menominee is also faced with ponderous new responsibilities including the payment of taxes set at the highest rate allowable under State law. He has also been forced to absorb a range of new expenses formerly carried by the community. Now he must pay for health care, for utilities, and for other services. For a number of people, water and electricity services have already been discontinued.[76] More than 300 families have not paid property tax since termination.[77] At least 1,000 bonds have been wholly or partially assigned for land or welfare payments. Some Menominees stand in danger of losing their homes if they cannot make payment for the land and taxes. Termination has, indeed, demanded of tribal members the full responsibilities of citizenship, but it has done nothing to provide them with the level of prosperity which enables most Americans to meet these responsibilities. The price of "responsibility" may be bankruptcy.

Freedom was the fundamental objective of the Termination Act. The failure to extend the real freedom of the tribe has been almost total. The goal of the legislation was to give the tribe full control over both personal and collective property. This policy, however, was rapidly modified, and virtually no trace of this intention remained by termination.

Over the protest of the Interior Department, Congress acted in 1956 to require permanent sustained-yield management of the tribal forest. This action reduced the market value of the Menominee forest by more than 60 percent.[78] The practical effect of the amendment was to limit tribal freedom in two important respects: liquidation of the forest was made far less attractive, and the tribe was forbidden to take the option of clear cutting the forest for a quick profit at some future date. Later, the Interior Department further limited the tribe's choices by informally notifying the tribal negotiating committee that a plan for sale of the forest would not be considered approvable. Finally, the Wisconsin Legislature refused to enact the legislation required by the tribe until delegates finally accepted a 30-year restrictive covenant, forbidding the sale or mortgage of tribal property without State consent.

Tribal control was not only limited by law, but was also curtailed by the plan for business organization. In no sense can it be said that the tribe made a free choice in favor of this plan. Tribal political institutions proved fully inadequate for the job of planning the tribe's economic future. It became necessary to abdicate a great deal of authority to one man called in from outside, and to a lawyer hired by the tribe. The plan was presented to the general council shortly before the deadline, with inadequate explanation, and with no time to prepare an alternative. The tribe did not decide that this was the best plan, but only that it was better to submit a plan than to be placed under a trustee by the Secretary of the Interior. Later, this same argument was used in the election of the voting trustees.

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[76] Dickie interview.

[77] Ibid.

[78] Interview with Frank Skubitz, July 17, 1964.

The complicated document, which few began to understand, provided no chance to revise the initial decision. Control of the business was to be completely out of the hands of the Menominee stockholders for at least 10 years. The First Wisconsin Trust Co. was given full control of a decisively large bloc of stock. In the end, tribal members had far less control than before termination. Under Federal trusteeship, the elected advisory council and the people in general council exercised control over budgetary decisions and decisive influence over the tenure of business managers and reservation superintendents. Today, these decisions are made by a Board of Directors controlled by non-Menominees.

Termination has failed to provide real ownership or to stimulate individual initiative. The arrangements devised for personal property combine virtually all the disadvantages with but few of the advantages of ownership. People who own homes are now forced to buy their lots at market value. Almost a third of adult Menominees have used their bonds for this purpose. Although they are required to buy the land, they are not allowed to freely sell it. Menominee Enterprises is given the option of first refusal. Similarly, people have been given bonds for which there is no commerical market, and stock which they are not allowed to sell. The bonds are considered a personal asset, however, and must be surrendered to obtain the same welfare assistance to which the people were previously entitled. To obtain services previously received, the Menominees must now give up their one capital asset, their hope for a future financial return, and their stake in tribal property.

The ultimate goal of the legislation was not merely to grant control of property, but to stimulate economic development. From all indications, however, the transfer of tribal assets to a strictly regulated form of private ownership has succeeded only in undermining the precarious basis of the tribal economy and in seriously damaging the economic self-sufficiency of the Menominee people.

State and Local Government.—In 1949, the Hoover Commission recommended that primary responsibility for Government services to Indian tribes be transferred as rapidly as possible to the State and local levels. Wisconsin was already providing some education and welfare services to Indian tribes. In 1953, Congress passed Public Law 280, transferring Federal civil and criminal jurisdiction in several States to the State government. In fact, Bureau officials and some Members of Congress assumed that most of the governmental functions relating to the Menominees had already been transferred to the State. Transition was thought to be a matter of little difficulty. The State government could surely provide better treatment because they were so much closer to the situation.

At the time the Menominee Termination Act was under consideration, the problem of local government was treated in a similarly cavalier manner. Since the tribe had financed local services, the support of local government was thought to present no problem.

Menominee County came into existence on April 31, 1961. Governor Nelson appointed to the new county board seven men previously chosen in a tribal election. Only one member of the new board had previous experience in tribal leadership.[9] "People felt," says Mr. Frechette,

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[9] Kenote interview.

"that the council should have protected them more in termination planning. They turned against the council." [80]

From the outset, the new county was in a difficult situation. The first fiscal year budget was balanced only with substantial State and Federal assistance. The State agreed to absorb medical and welfare costs totalling $150,000 for the first year. The State study committee also provided a consultant long experienced in county government to assist the county government.[81]

The initial budget demanded that all county property be taxed almost to the limit permitted in Wisconsin. Ninety percent of tax revenue was to come from Menominee Enterprises, a sum more than four times the corporation's 1961 profits.[82]

Tuberculosis seriously plagued the county, and threatened to unbalance the budget. A very high rate of infection was found when the county nurse instituted a testing program. Fifteen highway employees were tested, for example, and "one active case and four suspected cases were discovered." The annual cost of necessary treatment for Menominee TB patients was estimated at more than $80,000.[83]

The tribal economy was seriously depressed. More than half the population met the standards of eligibility for surplus commodities, and 25 percent were unemployed. Even the men who were employed by the mill received an average income of only $56 per week, to support a typical family of eight persons.[84] Each worker now had to assume the additional burdens of taxation, medical expenses, electricity, water, and other costs.

Federal subsidies were urgently needed. In early 1961, Representative Laird introduced legislation for a phaseout subsidy covering certain educational, health, and welfare costs. Although Laird held a seat on the powerful House Appropriations Committee, he had not succeeded in obtaining action in the 1961 session. The measure came before a conference committee in 1962. The county's position before the committee was undermined by a decision of two Menominee leaders.

The chairman of the county board and Mr. Kenote sent a memorandum to the conferees painting an optimistic picture of the county's prospects. They ignored a number of costs facing the county, and agreed to compromise the initial request. The two leaders consulted neither the county board nor any State officials.[85] None of the other members of the county board supported their position.[86] In the end, Congress allowed funds for education and for sewer construction, but other requests were rejected.

Menominee Enterprises literally owned most of the county, and the county board was reluctant to oppose the corporation executives. The company was the only important source of employment and of tax revenue. Of the seven members on the 1964 board, six are directly dependent upon Menominee Enterprises for their livelihood. Some of these men are in debt to the company $80,000 to $90,000. The county, observes one board member, is "pretty much like any other company town." Most board members, he says, "do not dare to oppose the enterprise." [87] One member who has opposed the company claims that corporation officials actively supported one of their employees in a race against him.[88] He has faced harassment both from the company and from the county board.

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[80] Randolph H. Runden, "Progress Report on Menominee County." A report to the Menominee Indian Study Committee (Madison, Feb. 20, 1963), p. 1 (mimeographed).

[81] Frechette interview.

[82] Interview with Earl Sachse, executive secretary, Wisconsin Legislative Council, July 13, 1964.

[83] Randolph H. Runden, "Report to the House-Senate Conference Committee on H.R. 41[illegible]" (Madison, Feb. 16, 1962), p. 1.

[84] Ibid.

[85] Dickie interview.

[86] Letter from Randolph Runden to Representative Laird, Feb. 16, 1962.

County government began operation in earnest in 1962. During the year, the board accepted transfer of the sewer and water systems, deficit items which were thus removed for corporation responsibility. The consultant warned that "the town board will have to adopt a tougher policy in regard to delinquent water bills than it has with regard to delinquent personal property taxes, if it is to be able to continue operating the sewer and water facilities." [89]

Taxation continued to cause trouble. Many Menominees, including some county officers, believed the tax to be unconstitutional, while others just couldn't meet the expense. In October 1962, the board sent out letters informing those who had not paid their taxes that penalties would be charged.[90] Three hundred families have made no taxpayment to the present time, but no further action has been taken. The board has talked of picking random cases to proceed against in a court test of its right to tax.[91]

The integration of Menominee County into the system of State government was sometimes cushioned by special assistance, but at the other times disturbed by sudden changes. Many Menominees were outraged by the 1962 ruling of Attorney General Reynolds that State game laws were to be enforced in the county.[92] By treaty, tribal members had been granted the right to hunt and fish throughout the year. The status of this guarantee after termination was unclear. After the decision of the attorney general, three tribal members were arrested. The arrest was challenged in court, and the Shawano County judge upheld the tribal claim to treaty rights. The State supreme court, however, reversed the decision. The U.S. Supreme Court refused to hear an appeal.[93]

The decision caused great resentment against State government. Some Menominees depended heavily upon the food they could obtain in this manner, and many more relied upon hunting and fishing for an important supplement to their diet. "They're trying to starve us out," says one woman. "The people at Zoar (the most primitive community) think it's just awful. Men are out of work and children are hungry." [94] Many violate the regulation. "Even the most respected citizen comes back from a trout stream with 30, 40, and 50 trout in his creel, and dismisses its illegality with a wink and a quip that he 'misquoted.' " [95]

In 1963, the State legislature again became involved in Menominee affairs. An appropriation of $80,000 was granted to assist the county in meeting its extraordinary TB problem. Later in the year the problem of the tribal income bonds was to come before the legislature.

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[87] Runden, "Report to the House-Senate Conference * * *," p. 3.
[88] Skubitz interview.
[89] Ibid.
[90] Runden, "Progress Report * * *," p. 2.
[91] Ibid.
[92] Skubitz interview.
[93] Green Bay Press-Gazette, May 24, 1962.
[94] Shawano Evening Leader, June 26, 1964.
[95] Blumrick interview.

As part of the 1959 legislative package, the State investment board was authorized to purchase Menominee Enterprises income bonds, thus keeping them off the open market. In September 1963, however, the investment board rejected a plan for such purchases. The Menominee bonds, it was decided, were not a secure investment for several million dollars of State funds. There was no assurance that the State would receive the first few interest payments, to say nothing of the principal.[96] The same consideration made it impossible to market the bonds commercially.[97] Many tribal members needed money, and it seemed quite possible that speculators would be able to buy the bonds for a fraction of their worth. The legislature considered this problem in its December special session.

The bonds were to become negotiable in January. Under State law, the bonds would then become assets which must be surrendered to the department of public welfare in order to obtain assistance. The special session enacted a law modifying this procedure. Those in need of relief were given the choice of either assigning the security completely or using the bond as collateral for loans from the welfare department for relief purposes; $1 million was appropriated to finance the program.

In Menominee County the bond program had a powerful impact. Although some tribal members warned solemnly against alienation of the bonds and charged the State with trying to take over the Enterprise, many applied for assistance. To be eligible it was necessary to prove one's inability to provide the "necessary commodities and services to maintain life under reasonable and necessary circumstances."[98] The welfare department was granted broad authority to establish rules and procedures.

Less than a month after legislative action, the new program went into effect. From the beginning, the office was flooded with applicants. The most unfortunate cases were people receiving social security assistance. They were required to surrender their bonds, but they were still held to the statutory monthly payment of $75, far less than those on general relief. "People on categorical aids," says one welfare worker, "are just giving their bond away with no additional benefits."[99]

The regulations of the program favored the creditors of the Menominees. Before any funds could be used for relief or for home improvement, it was necessary that applicants make loans against the bond to settle all debts. One county board member, in fact, charges that the program "is to help the company, not the individual."[100] The company benefited by being spared legal proceedings against recalcitrant tribal members, and also by receiving direct cash payments from State funds rather than merely assignment of a bond. Applicants had to settle all back taxes and utility bills. Once again, local merchants freely offered credit.

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[96] Rod Blum, caseworker, Menominee County Department of Public Welfare, report, July 1964, p. 3.

[97] Green Bay Press-Gazette, Sept. 26, 1963.

[98] Interview with Cliff Bertagnoli, July 17, 1964.

[99] Wisconsin, Department of Public Welfare, Division of Public Assistance, "Information for Menominee Enterprises, Inc. Securities Owners Welfare Program" (Madison, Jan. 8, 1964), p. 1 (mimeographed).

[100] Interview with Rod Blum, July 17, 1964.

Very little time had been available to organize the program. It was impossible to hire a trained staff or to provide a thorough orientation. "The result," says one worker, "was a tremendous number of errors. The staff members didn't have the faintest notion of actual needs or conditions. The program was poorly planned and poorly executed: $500,000 was exhausted with very little contribution beyond purchase of appliances." [101]

"The halls were jammed during the first weeks," one man recalls, "and there were no criteria." [102] Everything was left to the discretion of inexperienced men. Some of the early loans were used to buy unneeded cars. Requests were often accepted at face value, without any checking. Many tribal members did not know how to shop and were sold appliances they could not afford.[103]

Many Menominees, a caseworker says, "have no conception of the value of money. They were willing to buy anything they could get anything for." [104] Men would claim that they needed a chainsaw to get a job, only to exchange the expensive machine for a fourth of its value in a neighboring town. [105]

Almost 400 members had assigned their bonds to the welfare department by mid-1964. Thirty bonds had been largely exhausted. Although criteria had been established and standards had been tightened, one State worker found that only a "small minority" used their bonds wisely and carefully. The program, he says, is "not a good idea" because of the lack of professionally able to help them use their money." [106] He characterizes the program as "only a stopgap for a huge welfare program." People have not learned the value of money, and they have "no concern about what to do when the bonds run out." [107] One million dollars will only postpone for a short time a giant relief operation.

The Menominee crisis drew the attention of Gov. John Reynolds in summer, 1964. The man who had been chairman of the State study committee at the time of termination and who had made the controversial game law ruling, now dispatched administration task forces to the county to study the situation. In late July, he called a meeting to launch a new State effort. [108]

"The Menominee problems have been studied enough," the Governor said. "Now it's time to act." [109-112] He outlined 12 areas of possible State action before the meeting. "There is no reason in the world," he said, "why the talent and know-how of State officials and employees cannot be brought into immediate play. The problems of the county have long become so acute that the State must now actively help Menominee leaders to cope with them."

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[101] Skubitz interview.
[102] Blum interview.
[103] Ibid.
[104] Bertagnoli interview.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Ibid.
[109-112] Wisconsin, executive office, Project MAP (Menominee action program). (Madison: July 27, 1964), pp. 3–4.

It is incredible that as many as nine active TB cases are living in one house, while TB sanatoriums sit half empty in the State. It is incredible that the Menominees—poor as they are—are subsidizing other jurisdictions.

It is incredible that there is not a single doctor practicing medicine in Menominee County. It is incredible that practically no Menominee has been able to participate in manpower retraining programs. * * *

It is absolutely unacceptable that a multimillion-dollar recreational potential in that county lies dormant because of technical, legal, and financial hamstrings.

The Menominee action program announced by the Governor shared the common denominator of State programs for the tribe—it was admittedly stopgap in nature. No solution to basic problems was proposed. Further studies were to be made of topics ranging from the establishment of a State park to the possibility of tribal health insurance. Concrete steps were few, and were largely limited to gestures such as directing the free library commission to develop a county library and requesting the board of health to assign a staff physician for medical care.

Two months later, some progress had been made, and there had been a great many meetings concluding that the situation was very difficult indeed. Menominee County was granted price concessions received by the State in its purchases.[113] Plans were made for the establishment of a library, and a proposal for a State park was submitted. Although no doctor was obtained, funds were provided for employment of an additional county nurse. The State had multiplied its efforts, but fundamental problems remained untouched. Wherever large sums of money were required, the recommendation was either to request Federal assistance or to seek private capital.

President Johnson's war on poverty seemed an obvious source of Federal assistance, and State planners determined to make maximum use of it. Under the terms of the Economic Opportunities Act, a community action program of 13 projects was prepared, and a request was made for a Federal grant of $1,600,000. The proposal was forwarded to Washington in September.

Almost two-thirds of the money was asked for the construction of two community centers providing facilities for local government, a variety of community projects, a medical center, a library, and a tourist center. Other projects would provide equipment for a medical center, a remedial education program for children, special training for teachers, a 300-percent increase in child welfare staff, the establishment of a youth work program, and a strengthening of the police force to combat delinquency.[114-115]

The program is now under review in Washington. Whether the county will receive almost one five-hundredths of the total funds appropriated remains questionable. A crucial consideration, however, is that the majority of these necessary programs are requested not as continuing projects, but as pilot programs lasting from 1 to 3 years. Several of the "pilot projects," such as the provision of adequate police protection, are thinly papered-over basis services which the county is financially unable to provide. This problem will not disappear in the next few years. None of the projects, moreover, will contribute to the solution of the economic problems facing the Menominees.

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[113] Press release, July 27, 1964, pp. 3–4.
[114-115] Ibid., pp. 7–13.

The termination legislation envisaged the transfer of residual governmental functions to the local and State governments. Responsibility had indeed been given to the county, but it is a responsibility far beyond the resources of the community. The county can only function by further depressing the living standard of the people through taxation, and by dangerously burdening the one local industry. Even then, the county remains chronically dependent upon subsidies.

While accepting the power to regulate the county, the State government has shown little disposition to assume the Federal responsibility for providing assistance to the Menominees. Urgently needed stopgap assistance has been provided but there has been little inclination to tackle the underlying problems through a large capital development program. Understandably, Wisconsin has refused to take on a major State responsibility shared by no other State in the Nation. Substantial help is needed now, but no one accepts full responsibility for the Menominee community.

Assimilation.—The Menominee Tribe was considered an advanced, self-confident group in need of few special protections. A central goal of termination was to promote the rapid integration of the tribe into American society. It is, of course, too early to judge the long term effect of the policy. To the present, however, the impact has been to substantially decrease Menominee self-confidence while greatly increasing hostility toward whites. As Menominee attitudes favorable to successful assimilation have changed, so too has the outside view of the Menominees. The tribe is no longer seen as a prosperous and self-sufficient group, but rather as a poor community threatening to become a major welfare drain on the State.

Much of the bitterness generated by the struggle over termination was turned against those most favorable to rapid tribal assimilation. As the termination process began in 1954, the tribe was led by an elite which accepted white middle-class values. As the deadline approached, however, the power of this group was broken, and support grew for a tribal fringe group which regards termination as a conspiracy to rob the Menominees. Antiwhite feelings became more widespread, and antagonism toward the State and Federal governments increased sharply. Strident opposition and passionate denunciation are expressed at every meeting. Many people feel deeply wronged, and have been increasingly embittered by the actions of the corporation directors. Many speak angrily of the violation of constitutional guarantees and of treaty rights.

Many Menominees still hope that something will happen to change the situation, and most favor repeal of the termination law. More than 800 members, a majority of the adults signed the following petition:

> We, the undersigned, members of the Menominee Indian Tribe, do respectfully petition the Congress of the United States to immediately enact legislation which will repeal Public Law 399 of the U.S. Congress.[116]

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[116] Ibid., pp. 20–46.

Several members of the old advisory council signed the petition. In April 1964, the petition was submitted to President Johnson. "Please believe me," the chairman of the Citizens Association for the Advancement of the Menominee People wrote, "when I state there is a time limit for congressional repeal action in this matter. After the CAAMP plans to make their next move."

> I will appreciate your personal reply busy as you are, relative to your personally directing the Congress of the United States to comply with the requests of these signatures.
>
> We the signatories believe this law should be repealed because of the unjustifiable circumstances this law has brought on us. The reason is this: Since termination our business has been mismanaged at a great loss to us and our funds are depleted. We are now becoming a burden to the taxpayers of Wisconsin.[117]

The CAAMP is a small group organized around a core of bitter resistance to termination. Its pronouncements have a harsh antiwhite tone. "During the years between May 1, 1961 and August of 1964," one leader wrote, "the real Menominees' resources have supplied loads of money for the State, white intruders working on the reservation and uncounted other greedy white pigs, while Menominees got absolutely nothing, in fact, they were forced to pay State game licenses, taxes, pay for their land and often had no jobs to boot because those white outsiders intruded and bumped Menominees off their jobs in their own mill." [118]

A careful anthropological study of the Menominee tribe in the period immediately before the passage of the termination act found the tribal situation quite favorable to acceptance of white culture. A "positive psychological adaptation" to American values was taking place. "What is extremely important about this fact," the anthropologist wrote, "is the fact that it was only when certain Menominee were able to achieve success on our terms, so that they became acceptable within our system, that a positive psychological adapation could occur * * * The lesson in this is that until a people in the process of adapting to entirely new conditions of life are accepted within the framework of those new conditions there is no reason why the personality appropriate to the traditional way of life should undergo anything but regressive and demoralizing changes." [119] Termination has shattered what appeared to be a basis for successful assimilation.

There is no convincing evidence to show that the tribe has moved toward integration since termination. The creation of a separate county, in fact, means decreased cooperation with neighboring communities in some respects. Nor has there been a mass migration of Menominees away from the reservation and into the cities. Population statistics show only a slight decline in population.[120]

A community with a stable population and a high birth rate must have a continuing flow of outmigration. This, however, is not a new feature of the Menominee situation resulting from termination. During the decade before termination, for example, approximately half the people between 15 and 34 years old left the reservation.[121] The termination program did offer some temporary assistance through a program of vocational training under the adult education program. The program ended in 1961, however, and the need is more critical today.

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[117] Citizens Association for the Advancement of the Menominee People, "Petition to the Congress of the United States" (Keshena, Wis., 1963.

[118] Green Bay Press-Gazette, May 1, 1963.

[119] Constance Deer, statement, conference on Menominee Indians, Madison, Wis., undated, 1964, p. 3.

[120] George D. Spindler, "Education and Culture" (San Francisco: Holt, Rinehart & Winston, 1963), p. 25.

Many will be forced to leave for the cities if the industry continues its decline and no job-creating investments are made. Most will be unprepared for successful integration into city life. Assimilation beginning at the bottom in the worse slums will bring eventual integration only at a terrible human price. Termination has not produced rapid integration. The process has, however, undermined the self-confidence of the Menominees and their favorable orientation toward white values. Respect for the Menominee community has been badly damaged. The transition promises to be both difficult and long.

Reduction of Government expenditures.—A final objective of termination was to save the taxpayers' money. The first proposal for Menominee termination came in 1947, as a means to cut BIA personnel expenditures. Obviously, this objective must be ranked as a monumental miscalculation. While Federal expenses on the Menominee Reservation before termination had been nominal, expenditures began to skyrocket after the law was passed. Since 1954, more than $3 million has been appropriated by Congress, but none of the fundamental problems has been solved. Funds have not been provided for the capital investments required to give the county a chance for self-sufficiency.

The economic position of the tribe was clear long before termination. Through per capita distributions of tribal funds, reserves had declined dangerously by 1956. As the lumber market entered a long decline in 1958, the tribe's position became increasingly precarious. Well before the termination date, it was obvious that only the most optimistic projection of corporate income could show economic viability for the new county. Menominee Enterprises fell far short of this goal, and the tribe now faces economic disaster. The one personal asset of most Menominees is now being consumed in welfare payments. The State government has only postponed the day of reckoning with a very large direct relief burden. Clearly, there is no possibility of realizing this fourth goal.

It is now 3½ years since termination of the Menominee Tribe. The years have been full of hard decisions, disappointments, and growing bitterness. The story is not yet over, but it may end soon. Unless new legislation is passed, Menominee stock goes on the open market in 1965, and control of the corporation may pass from the tribe. Unless the record of the business improves dramatically, Menominee Enterprises may face bankruptcy. Unless the legislature finds that the new county has been functioning effectively, the provisional establishment of Menominee County may end next year.

In the 10 years since passage of the termination act, none of the major goals has been realized. Even if the objectives of assimilation and tax responsibility are eventually realized the cost will be exorbitant. Taxes will be taken from people unable to pay, and the process of integration will be begun by people with neither confidence nor skills, at the bottom of the urban slums. Termination was based on a series of false assumptions, and the policy cannot achieve the goals so convincingly set forth in the subcommittee hearing room. The Menominee Tribe is dead, but for no good reason.

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[121] Wayne H. Weidemann and Glenn V. Fuguitt, "Menominee: Wisconsin's 72d County" (Population Note, No. 3, Madison: Department of Rural Sociology, University of Wisconsin, April 1963), p. 8.

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C. Homicide of a Community

TERMINATION THIS TIME FOR THE COLVILLE INDIANS?

(by Robert W. May)

1969

This January [1969] was the fifth time that a bill was introduced in the U.S. Senate to terminate the Colville Indian Reservation and its more than 5,000 enrolled members in the State of Washington.

Few outside the northeastern part of the State where the reservation is located were aware of the reintroduction of the bill. Even area newspapers played the story down.

Part of the reason the reintroduction of the bill didn't make national headlines was that—while most Americans have heard about Grand Coulee Dam and about Chief Joseph—few realize that the Colville Reservation is where Coulee Dam was built and where Joseph died. Perhaps if they did they would spare a thought for the 5,189 living Colvilles who are stumbling and being pushed toward an ambiguous destiny.

Another reason the story was given little prominence is that few understand what a reservation is, much less what is implied by the termination of a reservation. Compounding the lack of information is an oversupply of misinformation such as that the Government gives Indians money and free services for being Indians or for staying on the reservation.

It is true that the Government does provide some special services for reservation Indians, but these can hardly be seen as "free" if one realizes the vast amount of land the Indians were forced to surrender to conserve a token of their original domain.

The annual payments on some reservations (per capitas) which some confuse with Government handouts come from the management of the Indians' own property and from their legal claims against the Government.

Some think that reservations are publically owned, a mistaken belief unfortunately shared by some in the highest levels of the Government. Senator Clinton P. Anderson, for example, referred to the Colville Reservation as "$100 million of Government property." [1]

Akin to this is the belief that reservations are detention camps where Indians are confined against their will. At one time this was more or less true; but now Colvilles and other reservation Indians can come and go as they please. Witness the large number of Colvilles who have homes off the reservation.

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[1] Hearings on S. 1413, Washington, D.C., Apr. 5–6, 1965, p. 60. (Subsequent references: "Senate 1965.")

Some Indians perpetuate this misconception: One Colville commented "without stretching my imagination, I refer to reservations as glorified concentration camps."[2] The irony is that this woman's own home—Tacoma—is some 300 miles from the reservation.

Again, it is true that some Colvilles feel trapped on the reservation.[3] Their "confinement" is certainly not military or political. More likely they don't have enough money to move and for some reason they cannot or will not participate in Government training and relocation programs.

WHY RESERVATIONS?

Indian reservations were established for two reasons: Either in recognition of aboriginal ownership of reservation land or in compensation for other Indian land expropriated elsewhere.

It is important to realize that justice not charity was the motivating force behind the establishment of reservations. The Government didn't "give" the lands to the Indians, it rather "guaranteed" them to them out of a striving for an ideal of justice which has proved elusive.

Part of the ideal was that reservation lands would remain under tribal ownership "in perpetuity."[4] The means of assuring this was the establishment of a perpetual trust over the lands by the Federal Government with the Indians as beneficiaries of the trust. The Bureau of Indian Affairs (BIA) was made Federal trustee.

HOW LONG IS FOREVER?

It seems like a contradiction, but that perpetual trust can be ended. That is essentially what termination means—the breaking of the Federal trust over the land. It can and has been done, primarily in response to House Concurrent Resolution 108.

That 1953 resolution stated that "it is the policy of the Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship."[5]

The resolution was misleading in statement and assumptions. In the first place, all Indians are citizens and had been for several decades prior to the passage of House Concurrent Resolution 108. In general they have and had the same rights as other citizens.

Secondly, the term "ward" was not then, and is even less so now, an accurate description of the status of the individual Indian with respect to the Federal Government. A better description is that used here of trustee and beneficiary of the trust, if one keeps in mind that the trust pertains essentially to Indian lands.

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[2] Senate 1965, p. 128.

[3] Unpublished materials made available in interviews with Dr. Deward E. Walker, Jr. at Moscow, Idaho, and Pullman, Wash., Oct. 11, 1968.

[4] Indian reservations established by treaty often have the phrase "in perpetuity" in their treaty documents. Executive order reservations—such as the Colville—are taken in law to have the same perpetual basis.

[5] Aug. 1, 1953.

That word "responsibilities" in the resolution may be an implied reference to the fact that Indian trust lands and income from them are nontaxable. But that fact does not mean that Indians are shirking. Colvilles who work off the reservation pay Federal income tax and all Colvilles pay sales tax for any purchases made off the reservation. In addition the Colvilles make large in lieu of tax payments to the two counties where the reservation is located for reservation services by the counties. What tax immunity Indian reservations have is intended to perpetuate the trust.

Since House Concurrent Resolution 108 passed some 53 reservations have been terminated. The total number of Indians whose reservations have been terminated is about 11,000. Terminal legislation has passed but not yet become effective for 11 other tribes with a total of about 24,000 members.[6] Since most reservations were established in the 1860's or 1870's the perpetual trust has often been less than some lifetimes.

Termination can be legitimate provided certain conditions are met. The first and most basic condition is that the Indians want termination and are informed about and prepared to deal with the consequences. On the Government's side the terminal legislation should be just. It is doubtful that any of these conditions have been met in the Colville case.

VARIED GEOGRAPHY AND PEOPLE

The Colville Reservation is bounded east and south by the Columbia River, west by Okanogan River and north by surveyor's line. An area of surprising variety, it ranges from sandy barren areas in the south to tremendous stands of ponderosa pine in the north. Crossing the reservation east to west means crossing three rivers, numerous streams and two mountain summits.

Like the geography the reservation's people are quite diverse. This partially results because they come from 11 different bands: Colville, Entiat, Lake, Methow, Moses, Nespelem, Nez Perce, Okanogan, Palouse, San Poil, and Wenatchee.

Also like the splitup terrain the Colville people are divided into numerous factional groups over various questions, among them termination.

Currently the reservation consists of about a million and a half acres. When it was first established by Executive order of President Grant on April 19, 1872, the boundaries of the reservation included a million and a quarter acres in the Colville Valley east of what is now the reservation. Incidentally, the name Colville was derived from a director of the Hudson's Bay Co. (Andrew Colville). It was applied first to Fort Colville on the Columbia River, then to Indians of the area, later to the present town and the valley.

A separate reservation called the Moses or Columbia was established to the west of the current reservation for certain bands who are now considered to be part of the "Colville Confederated tribes." It was established by a Presidential order in 1879 and at one time it included almost 3 million acres.

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[6] Letter from the Washington, D.C., offices of the Bureau of Indian Affairs and signed by Assistant Commissioner Fred H. Massey, February 20, 1968. At the time the Choctaws of Oklahoma were scheduled to be terminated in August of 1968, but their termination completion date was subsequently postponed 2 years by Public Law 476.

WITHOUT SANFORIZED LABEL

One cause of current Colville factionalism was the step by step reduction of those two reservations which concentrated quite diverse peoples on smaller and smaller pieces of land.

Less than 3 months after the original order was signed establishing the Colville Reservation a second order intervened. This new order, apparently pressured through by white settlers, substituted for the Colville Valley an area to the west.

The substitute area was to consist of about 3 million acres which included the current reservation (referred to locally as the south half) and a similar-size area (termed the north half) which extended to the Canadian border. Though there had been prior consultation with the Indians in settling on the boundaries of the original reservation, there was none prior to the second Executive order.

To appreciate the situation one must realize that these lands had belonged to Colvilles for thousands of years before the whites arrived. One must also realize that the mountainous second reservation—though nominally and temporarily double the area of the first—contained little more arable land and had a number of other bands already living there for whom no provision had been made in the first order. The Colvilles were not even told about the exchange until another 3 months had passed.[7]

It is the first of a long string of ironies and a source of modern confusion that no part of the Colville Valley is included in the Colville Indian Reservation. The Columbia Reservation under pressure of white miners and settlers was taken out of Indian hands except for a few allotments in 1883.

A further reduction of the Colville Reservation was the "sale" to the Government of the major portion of the north half in 1892. The terms of the "sale" were worked out while one of the Indian leaders most opposed to it was being held in Alcatraz for resisting the white encroachments.[8]

In exchange for ceding the north half the Indians were supposed to receive a million and a half dollars in five yearly installments as well as thousand dollar annuities for each of the "chiefs" of the bands. Congress did not immediately ratify the appropriations.

In the meantime, the Indians were told that if they would agree to take allotments under the General Allotment Act (The Dawes Act) and open up the remaining portion of the south half for homesteading they would get the money that was still owed them for the north half. Part of the money—the annuities were never paid—was finally appropriated in 1906.

Even before the south half was opened to white homesteading it had been opened to mineral prospecting by another act of Congress. Historian Robert H. Ruby describes that legislation as a "lighthearted gift of the Indians' landed property." [9] Most of the resulting mineral claims were never proved out, but at one time there were more than 11,066 of them outstanding. According to a Bureau of Land Management official in Portland there are still 146.

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[7] Sister Maria Ilma Raufer, O.P., "Blackrobes and Indians on the Last Frontier" (Milwaukee, 1966), p. 138.

[8] Robert H. Ruby, "Half-Sun on the Columbia" (Norman, Okla., 1965), p. 263.

[9] Ruby, p. 343.

In 1885 Chief Joseph's band of Nez Perce were placed as prisoners of war on the Colville Reservation. Apparently the only consultation about this move was with the leader of the Columbia band, Chief Moses, considered by white officials but not by the other Colville bands the "head chief."

The terminology and the assumptions upon which it is based need to be clarified. First there were no real tribes among the groups that made up the reservation population; in a strict sense this term is restricted to large groups who are politically unified and who have definite, often hereditary leadership known as chiefs.

Anthropologists refer to the 11 groups now called collectively "the Colvilles" as bands. At the time of white contact they were small autonomous groups which often had several different leaders at the same time who performed various temporary functions.

In any case, placing the Joseph band (and, in fact, the Moses band, many of whom only came there after their reservation was eliminated in 1883) on the Colville Reservation in effect reduced the amount of land available for other bands already there. Thus the claims of the Nespelem band to the area where most of the Moses and Joseph Indians were settled were reduced.

The injustices did not begin with the Nespelems: Joseph's claim to the Wallowa Valley in Oregon had been similarly extinguished by the Government. And it should be recalled that the Colville band itself was bilked out of its ancestral homeland and placed on the current reservation. Similar stories could be told for most of the other bands. However, placing most of these bands on the reservation did not generate anything like the hostility that placing Joseph's band there did, hostility which persists even now.

Mrs. Alyce Hallenius, a descendent of the Colville band, articulated the continuing hostility thus: "Because their Indian mothers taught them to love their people as brothers, they did not go to war, even in the most trying circumstances. For that reason the Colville Indians do not venerate a bloodspilling warrior [Joseph]." [10]

The hostility is particularly poignant since it is apparently based primarily on the fact that the Nez Perce went to war against the whites while the other Colville bands refused to do so. Both were trying to do the same thing in different ways: to preserve at least some of their land for themselves and their children. While the Nez Perce relied on their own strength against great odds, the other bands put their faith in the shifting sands of white men's promises. The end result for both was the same.

BLACKMAILED INTO TERMINATION

Lands lost in the past were a prelude if not a preparation for termination which Congress blackmailed and tricked the Colvilles into accepting in 1956. The background is this: following the General Allotment Act the Colvilles were given 80- and 120-acre allotments on what remained of their reservation at the time. Many Colvilles today refer to the allotments on the not uniformly fertile reservation as "starvation acres." [11]

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[10] Hearings on H.R. 5825 and S. 1413 and H.R. 6331, Washington, D.C., June 18 and Aug. 13, 1965; Spokane, Wash., Nov. 3, 1965; Nespelem, Wash., Nov. 4–5, 1965 (serial No. 89–23), p. 429. (Subsequent references: "House 1965.")

[11] Senate 1965, p. 229.

The other lands were thrown open to white homesteading; however, 818,000 acres remained unoccupied by whites or Indians when a freeze was instituted by the Department of the Interior during the Franklin D. Roosevelt years.

The Colvilles wanted back clear title to these lands which was finally arranged by Public Law 772 in 1956. Tagged onto the title clarifying sections of the bill was a provision requiring the Colvilles to develop a termination plan within 5 years or have one imposed on them. Former tribal chairman Harvey Moses told the writer that the termination clause was not even in the bill he and other councilmen were shown prior to their being called back to Washington, D.C. to testify.[12]

DO COLVILLES WANT TERMINATION?

It is not clear that the Colvilles want termination. The way they were bludgeoned into coming up with a plan in itself raises serious questions about whether any subsequent action on their part could be considered voluntary. A number of Colvilles to whom the writer talked said they opposed termination and yet they considered it inevitable.

Other questions were raised by two opinion polls on the subject of termination, one by the governing body of the tribe and the other by researchers from a northwest university. Both polls were taken in 1966 at a time when a group favoring termination—the Colville Liquidation Promoters—had secured 10 of the 14 seats on the tribal governing body, the business council.

The business council's poll was taken by mail. They sent out individual questionnaires to the 2,526 adults in the tribe asking: "Do you favor termination and liquidation of the tribal-owned reservation assets at fair value with the proceeds distributed equally to the members of the tribes [i.e. all enrolled Colvilles]?"[13]

Of the ballots sent out about 95 percent (2,404) were delivered; some 23 percent were not returned; about 2 percent came back marked "no opinion"; some 19 percent expressed opposition to termination as outlined. Of the ballots sent out exactly 50.4 percent were returned favoring the proposal as outlined.[14]

Not being statisticians, the business council majority misinterpreted the poll results by counting only ballots which expressed an opinion for or against termination; they didn't even figure in those who returned their questionnaires marked "no opinion." This led them to conclude that instead of a hairline majority favoring termination (with a large block of uncommitted members) there was a whopping 72.15 percent who favored termination.[15]

It is a mistake to assume that those who don't vote don't care. This may not be apparent to the white culture with its long tradition of majority rule; but Indians have their own perhaps even older traditions. A Colville named Barbara Nicholson pointed out one of these when commenting on the results of the poll: "The true Indian traditional way of showing dissension is by remaining silent." [16]

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[12] Interview at his home near Nespelem, February 1969. For the law see House hearings on H.R. 6154 and H.R. 7190, July 21–22, 1955, p. 1 ff.

[13] Hearing on S. 282, Washington, D.C., June 8, 1967, pp. 31, 34, 119. (Subsequent references: "Senate 1967.")

[14] Figures used in the computation were 2,526 ballots sent out, 2,404 delivered, 1,814 returned for counting, 1,272 "yes," 491 "no," 51 "no opinion," and 712 not returned. See Senate 1967, p. 119.

[15] Senate 1967, p. 31. The majority on the business council who favor termination have continued to use this figure in subsequent hearings; e.g., hearing on H.R. 3051, Washington, D.C., July 12, 1968, p. 83. (Subsequent references to the 1968 hearings: "House 1968.")

In addition, the poll cannot be taken as an absolute indication of the Inidans' sentiments toward termination legislation now pending because it did not represent that legislation accurately in at least two respects. The poll presumed that only "tribal assets" would be affected by termination; our examination of the bill will show that such is not the case. Also, the wording of the poll was that the sale of tribal assets would be "at fair value" which we shall also see is not assured by the bill.

More disturbing than the misreading of the poll by some tribal members was the fact that it was not correctly interpreted by Members of Congress, more disturbing because they ought to be more familiar with statistics and because they can and have terminated tribes without their consent.

If they think a tribe favors termination when it does not clearly do so, the actions they then take can be very disturbing indeed. For instance, this misinterpretation of the poll led Senator Jackson and the clerk of the Senate Subcommittee on Indian Affairs (James Gamble) to report on the Colville termination bill: "the committee believes that a large majority of Colville Indians want to dissolve the tribal entity and dispose of their assets." [17] The majority was not clear, much less large.

Substantially the same bill has passed the Senate four times and appeared virtually certain of passage this session until—unaccountably—no hearings were scheduled: Senator Jackson is chairman of the committee which has reported favorably on the bill in the past.

ANOTHER POLL

A more scientifically conducted sampling of opinion on termination and other issues on the Colville Reservation was that of Dr. Deward E. Walker, Jr., who is currently with the University of Colorado. Field researchers in an anthropology project under his direction interviewed 460 adults living on the reservation. At the time this was almost exactly 25 percent of the total number living on the reservation and about 50 percent of the adults.

The results were that 54.4 percent of those interviewed wanted no termination, 9.1 percent wanted partial termination, 33.4 percent wanted complete termination and 2.8 percent did not express an opinion.

In an interview Walker said that termination sentiment and other findings of the 1966 research project will eventually be incorporated in a general study on Colville acculturation concerning which research is continuing. He also said that the 1966 interviews were conducted in all parts of the reservation so that findings are representative of general reservation sentiment.

The results of the polls—if carefully interpreted—can be seen as complimenting each other. The Walker poll showed that a majority of those on the reservation opposed termination as they understood it while the business council poll showed that a very slim majority of the total tribal membership—including those living off the reservation—favored termination as outlined by that poll.

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[16] Senate 1967, p. 119.

[17] House 1968, p. 47. The Senate committee report was also published separately as Report o. 537, Aug. 22, 1967.

A tentative conclusion that most support of termination is from persons living off the reservation is borne out by an examination of the rise to power of the Colville Liquidation Promoters.

STRATEGY

Armed with that list and their own determination to terminate as well as definite ideas of how to go about it, the liquidators began their campaign. Heavy emphasis was placed on getting out the absentee vote.

The liquidators gained control by strategy beginning with the first election in which they ran candidates in 1963. They sent out literature to tribal members endorsing termination-minded candidates for business council positions. At the annual elections half of the council's 14 seats are filled.

Some whites want the Colvilles terminated. Some—just like the old days—want to get the Indian lands. Others want to see those lands on the tax rolls. Still others may think for one reason or another that termination is in the best interest of the Colvilles or that they overwhelmingly favor it.

For whatever reason Wilbur G. Hallauer, a white Washington State legislator at the time, became an early promoter of the liquidators. He was instrumental in getting a list of the tribal members with their addresses to the liquidators when the business council majority then in power were reluctant to release it.[18]

THEIR FIRST ELECTION

The first year they got two council seats. One of their winning candidates—now business council chairman—was Narcisse Nicholson, Jr. Nicholson was one of eight candidates in the Omak district. The three other districts are Nespelem, Keller and Inchelium. All districts except Keller have four councilmen, two of whom are elected each year. Keller's relatively small population is represented by just two councilmen who are elected on alternate years.

Because the vote was so divided and because the liquidator endorsement made him attractive to absentee voters, Nicholson got a council seat even though he got considerably less than half the possible votes in his district.[19]

The other winning liquidator candidate that first year was perennial councilman, Barney Rickard. Rickard had been on the council for some 25 years at the time he got the liquidator endorsement.[20] So his election with 62 percent [21] of the vote was probably less a shift in tribal feeling toward termination than a sticking with the tried and satisfactory.

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[18] Senate 1965, p. 146.

[19] He actually got 19.6 percent of the total votes cast in his district. However, since each voter in that district can vote for two candidates, the most votes any one candidate can get is approximately half of the total. (The approximation comes in because some voters lose one of their votes by voting for only one candidate.) The total number of votes in the Omak district in 1963 was 584, hence the approximate maximum for any candidate was 292 or more. Of these the current tribal chairman got 114 or about 39.1 percent.

[20] Interview at his home near Keller, October 1968.

In 1964 the liquidators endorsed five candidates [22] all five of whom won. In Inchelium one liquidator candidate lost in the on-reservation vote, but was pushed over the top by the absentee vote. Together the two liquidators there won with 39 percent of the onreservation vote and 77 percent of the absentees.[23]

The liquidators two candidates got more than half the on-reservation vote in the Omak District and more than two-thirds of the absentee vote in that election. With the 1964 election returns in, the liquidators had half of the seats on the council.

In 1965 they got two more seats with the help of the off-reservation group. And in the meantime an incumbent who had not previously taken a clear stand on termination endorsed the liquidators and they in turn endorsed her.[24] When she won this gave the liquidators their current majority and membership on the council.

. . . NOT SENTIMENT

It is made clear that the liquidators' wresting of control of the business council was more strategy than overwhelming sentiment favoring their brand of termination by an examination of the percentages of the total vote in each of the years they have run candidates.

In 1963 they got 27.9 percent of the total votes cast. In 1964 they got 40.1 percent of the total votes. In 1965 it was 46.1 percent. In 1966 it was 50.4 percent. And in 1967 it was 56.9 percent. Last year and this they hung onto their contested seats with less than a majority of votes cast—48.9 percent and 43 percent respectively.[25]

In only two of seven elections since they started running candidates have liquidators gotten a majority of the votes. Their influence seems to have waxed in their first 5 years and to have been waning subsequently.

Their greatest appeal is to absentee voters apparently attracted by pledges of liquidation of tribal resources and a distribution of the proceeds. In every year since they first started putting up candidates they have gotten a higher percentage of the off-reservation votes—the absentee votes—than of the on-reservation. Last year for example, 67.1 percent of their votes were from persons voting absentee (810 votes out of a total of 1,214).

This year it was 72.7 percent of their votes which were absentees (1,063 votes out of a total of 1,467). This year they got 56 percent of the total absentee votes and 26.9 percent of the total poll votes. Put another way, those opposing termination would have won all seven seats which came up this year if only votes cast at the polls had been counted.

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[21] House 1965, p. 197. Each voter in this district has only one vote hence there is no difficulty interpreting the percentages.

[22] Telephone interview with the CLP's current president, Mrs. Alice Huber, Jan. 1, 1969.

[23] House 1965, p. 197.

[24] This candidate was not endorsed by the CLP in 1963 (same source as note 22); and, in fact, it was alleged that she campaigned against termination that year (see House 1965, p. 424. A different form of termination for the Colvilles was then taking shape.)

[25] The 1963–65 percentages were calculated from figures in House 1965, pp. 197–198. Percentages for 1966–68 from House 1968, pp. 93–94. The 1969 percentages were derived from figures obtained from the chairman of the tribal election board in a telephone interview, May 20, 1969.

Voluntary termination has been called "the suicide of a community," because it is a community's last official act. Termination imposed from without (by persons not a part of the community) might then legitimately be called the homicide of a community.

Many of those living away see the reservation as an investment which is not bringing them good returns. They would like it sold and the money distributed so they could invest it elsewhere. They no longer hold traditional concepts about the land, hence the reservation as such has little value or meaning to them.

We will go into the Indian concept of land and some other distinctive values observable among the Colvilles later on. Here it is appropriate to touch on some facts about off-reservation Colvilles.

THOSE WHO LIVE OFF

Some 47.8 percent of the Colvilles live more than 20 miles away from the reservation.[26] It is significant that these members tend to have less Indian blood than those living in the immediate reservation area.

A 1959 study showed that only 50 percent of those living off the reservation were half or more Indian while 63 percent of the reservation Colvilles (and those in areas immediately adjacent to the reservation) were half or more.[27]

There is a reason: As members' blood degrees diminish the reservation starts to have less to offer them. Often they look more white than Indian, so they experience less white discrimination.

Another thing is that if an individual's blood degree falls below a certain percentage of Indian inheritance his children may be ineligible for enrollment, per capitas or hunting and fishing rights. Especially if they no longer live on the reservation, such persons—in a sense the last Indians in their families—often and understandably want the tribal assets turned into cash. It's the only way their children will get anything out of the reservation.

But it should be emphasized that not all who are only part Colville and living off the reservation want to see it terminated. One example was the testimony against termination of Violet Friedlander Abrahamson at a congressional hearing.

Mrs. Abrahmson, of Spokane, a five-eighths Colville, opposed termination but retained her sense of humor when she observed, "the white man come over on the boat. If I had been there I would have thrown rocks at it. I would have probably hit my grandfather on the head." [28]

DRAMATIS PERSONAE

When the current majority got control of the business council—the same day as they were sworn in—they hired one of the founders and the first president of the liquidators, Ruby Babcock.[29] Mrs. Babcock became their legislative assistant and as such was empowered to attend all business council and legislative committee meetings as well as all legislative hearings in Washington, D.C.

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[26] BIA development officer at Coulee Dam Agency in telephone interview, February 1969.

[27] Jessie A. Bloodworth (preparator), "Human Resources Survey of the Colville Confederated Tribes," a field report of the Bureau of Indian Affairs, Portland area office, Colville Agency, June 1959, pp. 55–57.

[28] House 1965, p. 172.

This blanket authorization irked those opposed to termination, because even their elected representatives on the council have been at times hindered or prevented from attending the termination hearings by the failure of the council majority to authorize their travel expenses.[30]

Quick-witted Mrs. Babcock is one-eighth Indian. She lives off the reservation and thus is not eligible to run for the council. But the authorization gave her even broader authority to attend the hearings than the councilmen themselves.

Some of those who oppose termination have gone so far as to say that she has become in effect the council's 15th member. Technically this is not the case, however. So undoubtedly it was a slip of the tongue or a transcription error when council chairman Narcisse Nicholson was quoted as saying at a 1967 hearing, "we have a 15-member counsel." [31]

The liquidators also talked Judge Joseph Wicks who had recently retired from the Okanogan County superior court into becoming their tribal attorney. Wicks, a Cherokee, had a reputation of being hard on Colvilles in his court. This coupled with the fact that he had come out for termination at some of the hearings made him a not-too-popular choice among some of the tribal membership.

Lyle Keith, formerly tribal attorney for 18 years and widely respected for his knowledge of Indian law, had resigned when the termination council not only did not consult him but went to Wicks and Wilbur Hallauer, the State legislator to whom we have referred, for legal advice on important tribal matter.[31A]

Another principal is the BIA superintendent for the Colville Reservation, Elmo Miller. Miller was superintendent on the Klamath Reservation in Oregon while it was being terminated, and to all appearances he was transferred to the Colville to terminate it.

In some ways he personifies the debilitating paternalism for which Indians so often criticize the Bureau: on the day he was interviewed he was interrupted making arrangements with two Indian women to do their banking for them. Perhaps his assignment was justified from the point of view that his experience at Klamath would be valuable when and if the Colvilles were terminated.

In any case, that assignment did not bring cheers from either the Indians opposed to termination who see him as a terminator or from those favoring it who half seriously say that he learned how to stop termination at Klamath.

In such a context of distrust it must be hard to maintain whatever impartiality he attempts. He admitted in the interview that he has been "walking a tightrope" since getting the Colville assignment.[31B]

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[29] Other founders were Mrs. Alice Huber and Ira Lum. Resolution making Mrs. Babcock legislative committee assistant is contained in House 1965, p. 303.

[30] Senate 1965, p. 84 ff.

[31] Senate 1967, p. 27.

[31A] Senate 1965, p. 146.

[31B] Interview at Colville Indian Agency, Coulee Dam, Wash., Oct. 21, 1968.

PART II: TERMINATION LEGISLATION

The Klamath termination has more than casual relevance to the proposed Colville termination, not only because the superintendent was transferred from there, but also because the Colville termination bill is patterned on and in places is a word-for-word transcription of the Klamath bill.[32]

There are differences: after it was precipitously enacted, the Klamath bill was amended no less than five times in 5 years. Many of the amendments have been written into the original Colville bill.

Despite the amendments the latter legislation is so studded with ambiguities that it will not be possible to cover all of them in the brief space of this article. Just the same, it is hoped that the examination in detail of some of them will encourage those responsible for the legislation to either clarify and perfect it throughout or to discard it altogether.

The analysis is of the bill in the form it most recently passed the Senate. The slightly different House version has never cleared the Subcommittee on Indian Affairs there, a fact which prompted one disgruntled liquidator councilman to say of the subcommittee chairman (Representative James A Haley) that he is "not in this world legally."

CONSENT CLAUSE

Section 1 of the bill provides that after the bill is enacted into law it will become effective when "a majority of the number of the adult members of the tribes voting in a referendum approve" it. Notice that it is a majority of the adult Colvilles who vote, not a majority of the Colvilles or even a majority of the Colville adults.

This section is based on the assumption that the majority rules, which is not a safe supposition based on the political and cultural situation on the Colville. We will examine this flaw in the legislation later in a brief survey of persistent Indian values. There are some other serious problems with this so-called consent clause.

For one thing, those who are qualified to vote in the termination referendum are members of the tribe who are adults according to the laws of the place of their residence. Some Colvilles live in States where the voting age is 18, others where it is 20 or 21. In Washington the voting age is 21. In order not to give undue weight to absentee Colvilles the voting requirements should be unambiguous for all tribal members.

If anything, members living on the reserveration should be given a larger voice in its future. A person enrolled with minimum blood qualifications and hence whose children are not qualified for enrollment has the same vote in the referendum as an enrolled full-blood with 10 children on the rolls. This gives persons living off the reservation and who tend to be less Indian (as we have seen) a disproportionate voice in the referendum.

To true the scales some have proposed that parents and guardians be enabled to cast votes for or against termination in behalf of their minor enrolled children.

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[32] Public Law 587. Amendments are Public Law 85–72; Public Law 85–132; Public Law 85–731; Public Law 86–40; and Public Law 86–247.

There is one probably not insurmountable problem with this suggestion as was pointed out by former Indian Commissioner Philleo Nash in a letter to the writer. That is that some enrolled Colville minors do not have living parents or guardians.

"Some Indian minors," he wrote, "are represented in business matters by the Commissioner of Indian Affairs in the absence of a parent or legal guardian. Having the Commissioner or his representative vote on a matter which required a referendum of members would present difficulties."[33] The Commissioner would be in the awkward partisan position of voting for or against termination.

In any case, some way must be found to protect the interests of those enrolled Colvilles who will not be allowed to vote in the referendum, since it is obviously the purpose of the legislation to protect their interests after termination goes into effect.

A later section of the bill requires that a definitive roll of the tribal membership be drawn up. Throughout the hearings numerous persons have pointed out repeatedly the inequities and inaccuracies in the basic roll which was compiled in 1937. An accurate and equitable roll should be drawn up prior to the termination referendum and not afterward (as now provided) when members just enrolled will have no say in whether or not they will be terminated. Presumably by that time the decision will already have been made in favor of termination.

WHAT TERMINATION ENDS

Section two spells out the areas of termination. Those include ending Federal supervision over the trust and restricted property of the Colvilles—that is ending the trust—and ending all Federal services furnished to them because they are Indians.

In support of the bill its proponents use the argument that if it goes into effect the only thing which will be affected will be the tribally owned timberland which as the bill stands will become a part of the National Forest system.

They assert that the only effect on individual Indian allotments will be that they are subject to taxation. The taxation is no light matter: many Klamaths are losing their allotments through sheriff's sales because they are unable to pay property taxes following their termination. The same thing can and probably will happen on the Colville.

Beyond this proponents oversimplify the situation which can be expected to prevail following any termination. The Colvilles will lose all assistance formerly provided by the Federal Government through the Bureau of Indian Affairs, the Public Health Service, and other Federal agencies because of their status as Indians.

This assistance is substantial. Even granting that there is probably some deadwood in these agencies it probably does not represent more than a small part of their combined annual funding of nearly $2 million.[34]

Some $500,000 of this is expended on such services as medical and dental care for the Colvilles, the employment of a social worker and an education director, assistance to the Colvilles in getting vocational training and employment assistance off the reservation, in lieu of tax payments to help support public schools attended by Colvilles, BIA boarding schools for Indians with special problems or special talents.[35]

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[33] Letter to the writer, Nov. 15, 1968.

[34] Senate 1965, pp. 24–25.

A major portion of the rest of the Federal money was spent on development, protection, and administration of the Colville forests which incidentally include in excess of 4 billion board feet. How much in excess is a matter which is disputed; however, other estimates have put the number of board feet as high as 7.34 billion[36] including ponderosa pine, douglas fir, western larch, and other species. In addition to Federal funds about 10 percent of the tribal income was used for administration of the forests.

Other federally funded programs involved cattle range development, construction and maintenance of roads, buildings, and utilities as well as an ambitious sanitation project which by last fall had brought running water to some 85 percent of the Indian homes on the reservation.[37]

The sanitation project was undertaken by the Public Health Service which also has a clinic on the reservation at Nespelem which treats some 6,200 outpatients every year in addition to contracting out some 3,200 visits at area hospitals by Colvilles yearly.[38]

There is question about the relevance of some of these services to the Government's essential role of perpetuating the trust. However, many Colvilles have come to rely on them and it seems unconscionable to terminate them as abruptly and completely as the bill envisions.

Since the 1968 hearings the business council majority has begun contemplating an insurance program which might help fill part of the vacuum left by the termination of Federal services. This is commendable if somewhat belated.

The sections in the bill pertaining to tribal hunting and fishing rights are somewhat unclear. On the one hand they are to be appraised, on the other no provision is made to pay for them. If they are to be taken away by the termination the result could be hardship for families living on the reservation.

One liquidator councilman said that her family gets about half its meat by hunting on the reservation. Indians can now hunt there year round. She admitted that whether those who depend on the reservation for food would be able to buy it after termination would depend on the amount of the termination settlement. She apparently was confident that the settlement will be adequate, but the legislation does not assure that it will be.

HOW MUCH FOR A HERITAGE?

The sixth section of the bill provides for the appraisals of tribal property. On the reservation in addition to tribal property there are two kinds of property: allotted which belongs to one or more individual Indians and deeded which belong to Indians or white and which has been taken out of trust.

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[35] Senate 1965, p. 32 and House 1965, p. 222. The total figure for fiscal 1966 was $487,320.

[36] For smaller estimate see hearing on H.R. 6801 and H.R. 8469, Washington, D.C., May 15, 1962, p. 15. For larger estimate see House 1965, p. 386.

[37] Interview with Johnny Nicholson at Public Health Service clinic near Nespelem, Dec. 3, 1968.

[38] Senate 1967, p. 120.

The appraisals would determine the "fair market value" of the tribal timber and mineral rights and the "value to the tribes" of hunting and fishing rights. The fair market value of timber assets is given this special definition "the market price that would be realized if the sale of the timber assets were made over a period of 10 years with allowance for growth that will occur during the sales period." The fair market value of the mineral rights is not defined.

"JUST COMPENSATION"

Former Attorney General Ramsey Clark questioned whether these "varying definitions" of the value of the tribal assets would result in just compensation, adding that the Government is forbidden by the fifth amendment of the Constitution from taking private property for public use—as it would under the bill—without just compensation.[39] So that even if there weren't a moral obligation there would be a legal one.

Some Colvilles—for instance former business council chairman, Harvey Moses— say that of all the definitions of values "the only instance where the appraisal may be of some value would be the appraisal of tribal timber assets." He stressed the "may be" and the "some value." [40]

His reason for doubt even in this one instance was that the bill does not specify whether the timber appraisal will be discounted to allow for marketing impact or conservation; in fact it does not specify that the values determined by the appraisals will be paid.

According to one estimate—that of the Stanford Research Institute—making allowance for impact would cut the final settlement by more than a third from $100 million to $61 million.[41] A later estimate is that it would cut the appraisal to $45 million.[42] Because of the ambiguity of the bill it is impossible to say which of these estimates—if either—is accurate.

UNHEEDED SUGGESTIONS

Two suggestions have been made to clarify this section. Ramsey Clark suggested that "in each instance the term 'fair market value' be used with any qualifications or limitations."

His suggestion was only partially heeded: in fact a later section which had read that lands to be sold were to be sold "at the appraised value" was left out of the bill in recent Senate versions.[43] Incidentally, it appears this was done at the suggestion of Elmo Miller.[44]

Apparently Miller's reason for the suggestion was a lawsuit now in progress at Klamath where the termination bill at the time of passage specified that tribal lands were to be sold at "the appraised value." [45]

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[39] Senate 1965, pp. 12–13.

[40] House 1965, p. 294.

[41] Hearing on H.R. 6801 and H.R. 8469, Washington, D.C., May 15, 1962, p. 43.

[42] Senate 1967, p. 103.

[43] Compare S. 282, sec. 6f (in Senate 1967, p. 4) with S. 1413, sec. 6f (in Senate 1965, p. 3).

[44] Interview at Coulee Dam on Oct. 21, 1968. At the time he said he had suggested a number of the amendments which had been incorporated into bills then before Congress.

[45] Compare Public Law 587 (83d Cong., chap. 732, second sess., S. 2745, all 68 Stat. 718) sec. 5(a)(3) with Public Law 85–731 (85th Cong., S. 3051, 72 Stat. 816) sec. 28(b).

This was later amended to read "the realization value" which turned out to be—according to one estimate—about 60 percent of the appraised value of $73,000 apiece.[46] The Klamaths are suing for the difference.

The other suggestion for assuring just compensation was made by a Colville leader named "Pascal Sherman" among others. Sherman noted that the best way to guarantee that the amount paid would be fair was to have the appraisal before the termination vote. This way Colville people would know what they were getting in exchange before irrevocably committing themselves to termination.

Even the liquidators recognize the ambiguity in the definitions of value. In the 1967 Senate hearing business council secretary Oliver Pooler, a liquidator, said "it is assumed in this statement that the conservation factor will not be a cost to the Indians and will not decrease the ultimate price paid to the Indians for the value of the lands and timber."[47]

If the liquidators are really interested in obtaining a just compensation—as their 1966 opinion poll suggested—they should not assume, they should demand that the bill be clarified to assure it.

An objection to the method of the appraisal came out in a 1965 hearing on the bill before the Senate. Frank George, a councilman opposed to termination who died last fall, pointed out that while the bill provides for three independent appraisers it does not specify that the three shall use the same inventory of tribal resources, so that the resulting appraisals would be very different and none of them just.[48]

EMPLOYMENT

Perhaps the reader will bear with an aside concerning reservation employment the relevance of which to the appraisal will be made apparent.

In the 1968 hearings the liquidators contended in their majority statement at the House hearings on their termination bill that "most of the employable members of the Colville Tribes are gainfully employed. There is sufficient employment in the area in the timber, farming, and fruit industries and construction field so that any tribal member who is qualified to work may do so."[49]

These statements are misleading. The Bureau of Indian Affairs estimates that half of the labor force of the reservation is regularly unemployed,[50] a figure which is corroborated by the liquidators in their own report on employment published in a 1967 hearing.[51]

That report included three classes or persons who are not normally considered a part of the labor force; namely, persons over 65 and/or disabled, housewives and students. Removing these from the statistics one discovers that in their sample 17.3 percent were unemployed year-round, another 37.4 percent were seasonally or temporarily employed while only 45.3 percent were permanently employed.

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[46] Senate 1967, p. 87.

[47] Senate 1967, p. 33.

[48] House 1965, p. 316. This reference brings up a number of criticisms of the bill which we have not been able to cover in this brief treatment.

[49] House 1968, p. 86.

[50] Senate 1965, p. 33.

[51] Senate 1967, p. 61.

Since seasonal or temporary employment is another way of saying regular unemployment, the picture appears even bleaker than the Bureau estimate: A total of 54.7 percent of the Colville labor force were regularly unemployed.

The revelance to the appraisals is that persons who are regularly unemployed cannot be expected to understand good money management. In other words, poverty—the average Colville Reservation family income has been estimated as low as $2,800 [52]—is not cured by money alone. So that even if the individual settlements are relatively large it is to be expected that those not trained in money management by regular employed will exhaust their termination funds and end up with neither land nor money.

A second point of relevancy of Colville unemployment to the appraisal is that the high unemployment and the low appraisal (which can be expected if the reservation is terminated soon) both result from the same thing—underdevelopment of the reservation resources.

DEVELOPMENT

In light of this the liquidators' argument that the tribe's land and timber holdings are not bringing in the return that could be expected if their value were converted into cash which could be invested appears somewhat weak. They are not bringing in what they would if they were developed.

In an interview one liquidator pointed out that in a normal year a tribal member will receive about $300 in per capita funds from tribal resources. He noted that the Stanford Research Institute pegged the total value of tribal timber at $100 million and concluded that if this money were invested at 5 percent the per capitas would swell to nearly $1,000—three times what they are now.

There are two things wrong with the argument. In the first place, there is no assurance—as we have seen—that the sale of the tribal property would bring in $100 million.

In the second place, the argument does not figure in inflation. While the per capitas were increasing to 5 percent the value of the principal would be decreasing as a result of inflation. For example, last year inflation was at the rate of 4.7 percent so that the net real return on an investment at 5 percent was 0.3 percent or about one-fifth of what the Colvilles are now getting. What's more inflation has, if anything, increased the value of the Colvilles land.

DEVELOPMENT OPPOSED?

The liquidators claim that the tribal members are opposed to "any development," [53] but they back up this claim with an opinion poll which was taken in 1965:

> The Bureau of Indian Affairs has reported to Congress a proposed plan for economic development of the *entire* Col-

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[52] This is a 1963 calculation made by the BIA. It includes per capita payments from tribal sources for an average size family which came to $1,290. If these payments are excluded from consideration, the average family income from wages, salaries, or other sources comes to about $1,500—or half what the Federal Government has determined to be the poverty line. Senate 1965, p. 33.

[53] Senate 1967, p. 63.

> ville Reservation *under continued Federal trusteeship.* The plan calls for borrowing about $14 million by *mortgaging* reservation assets. That money would be used to build and operate tribal *mills* for processing *all reservation timber* in the hope of increasing employment and per capita payments to tribal members. *Future enrollment with the Confederated Tribes of the Colville Reservation would be closed.*

What is your opinion of the above *proposal of the Bureau of Indian Affairs?* [Emphasis added.] [54]

Although less than 50 percent of the opinion polls were returned, those that were returned were 95 percent opposed. No wonder: the poll completely misstated the proposal. It is contained in the Senate hearing on Colville termination held in Washington, D.C. on April 5, 1965.[55]

Commissioner Philleo Nash brought it into the discussion, but that did not really make it a Bureau proposal. Actually it first came up as a possibility for development in the Stanford study which was sponsored by the tribe itself. It was not a Bureau proposal. This is important, because many tribal members objected [56] not to development but to the idea that the Bureau would have something to do with it.

Contemplated under the proposal were a wood products enterprise and an improved range management program—not development of the entire reservation.

Nash stressed that the plan could be put into effect with termination although it would have a better chance of success without ending the tax-free status of Colville trust lands.

The plan apparently did not call for a mortgage in the conventional sense that if it were not paid off within a given time it could be foreclosed and the land become the property of the Government or private mortgager. Many Colvilles thought it did and objected to it for that reason.

Nash did say "at the present such an enterprise would require dedication of the full stand of reservation timber." He did not say that the proposed tribal *mill*—there was not discussion of more than one mill as the opinion poll suggested—would process "all reservation timber." The Stanford study in outlining the possibility of a tribal mill had said that it should process about "one-third of the allowable cut of timber."

The question of closing the rolls was not made a condition of the development plan. The framers of the opinion poll apparently took a page from some past congressional acts such as the bill to clarify the tribe's title to the tribal land which tied distasteful conditions—in that case coming up with a termination plan—to an appealing central issue. They went Congress one better by tying what to many was an unacceptable condition—closing the rolls—to a controversial plan.

Finally, many tribal members objected to the timber development proposal and specifically stated that they would favor some other type of development.

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[54] House 1965, p. 251.

[55] P. 21 ff.

[56] For tribal members' criticisms see House 1965, p. 252 ff.

DEVELOPMENT POTENTIAL

Some other possibilities for development are in the areas of mineral exploration and exploitation. There are known deposits of copper and seems to be a strong possibility of uranium finds similar to those of neighboring Spokane Indian Reservation. A thorough mineral survey has never been made.[57]

It apparently will not be made as a part of the appraisal. At least there is grave doubt. The bill reads simply that the appraisers will determine the fair market value of the mineral rights. The value to be determined is presumably in their present unknown or undeveloped state.

The recreation potential of the reservation is practically untapped. The biggest possibility in this area is on Lake Roosevelt behind Coulee Dam. There the Colvilles own a considerable amount of frontage and have with the Spokane Indian Tribe of a neighboring reservation "a paramount right to an equivalent of one-quarter of the lake's surface," as well as access and usage rights to the area along the lake which was taken by the Government at the time Coulee Dam was built and for which little if any compensation was paid.

The attorney for the Spokane Tribe, Robert Dellwo, who described the Indians' rights to the lake said that they are not clearly defined now, but that they appear to be extensive. He pointed out that unlike the Spokanes the Colvilles have not, apparently because of their termination preoccupation, pushed for a definition of their rights in this area.

There is also considerable potential for recreation development on the many other lakes and streams on the reservation. For example, the mineral lakes which abound there could be developed as health spas.

The reservation itself is steeped in history, including as it does graves of many influential Indian leaders. It would not, of course, be fitting to trade on the dead; but some tourist facilities on the reservation owned by Indians—motels for example—would not be out of place.

In short then, it does not follow that the tribe is opposed to "any development" just because they rejected a specific proposal which was not accurately worded. Further, why should we whites always be the ones to develop and profit by the Indians' lands and resources?

COMPETENCY

Returning to the bill, after the appraisals have been made and delivered to tribal members they are given the option of either withdrawing from the tribe and getting their individual shares of the divided tribal holdings converted into cash or of remaining with the tribe and participating in a tribal management corporation.

It should be stressed once again that whichever option an individual Indian chooses in neither case will he retain his legal status as an Indian: both those who withdraw and those who remain will lose all special Federal services previously given because of that status.

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[57] A mineral survey was being planned before the liquidators got a majority on the council. They oppose such tribally financed surveys on principle. (cf. CLP election materials, Mar. 17, 1967.)

Minors and incompetents will have their choice of whether or not to remain with the tribe made by someone designated by the Secretary of the Interior; that someone will presumably be Superintendent Elmo Miller.

Colvilles who don't vote in this second election—the first being the consent clause—will be considered to have voted to remain with the tribe, a feature to which many Colvilles object.

The Secretary of the Interior—that is his representative, Elmo Miller—is given authority under the act to determine who among withdrawing and/or remaining members (the bill does not specify) are "in need of assistance in conducting their affairs."

The criteria for the designation, though they are spelled out in more detail than in the Klamath bill, are still quite vague. The liquidators say that "at the present time the actual number of adults requiring assistance in handling their affairs is very low" and that the bill "provides for adequate protection of the rights of minors and incompetent adults." [58]

The part of their statement which needs to be stressed is "at the present time." Colvilles who at the present time are qualified to vote in tribal elections will be qualified to vote in the referendum.

The way the bill is written no one will question their competency or suggest that more than the 60 now so classified are in need of assistance until after the referendum has passed.

Then Elmo Miller steps up and starts determining who is and who is not competent or in need of assistance on what amounts to his own personal judgment. Some Bureau people tend to talk out of both sides of their mouths on the issue of competency: they say tribes are ready to terminate, then they declare many of the individual Indians not fully competent.

ONE TRUST FOR ANOTHER

Witness what happened at Klamath as described by Theodore Stern in his "The Klamath Tribe: A People And Their Reservation" (p. 254):

> The immediate consequence of termination for a major part of the Klamath people has been an exchange of private for Federal trusteeship. A large number have chosen to forego any further common management of their assets. A number of adults, both among remaining members and those who withdrew, were placed under guardianship or involuntary trusteeships as having demonstrated incompetence to handle their own affairs. Among adults, they comprised 14.4 percent of those living on the reservation and 12.7 percent of absentee members. Since that time, a substantial but undetermined number of individuals not under personal trust have exhausted the funds they received, and some have turned to kinsmen for assistance. The large body of minors, both on and off the reservation was placed under trust. By terms of a recent court ruling, upon reaching majority they are to receive their funds without further demonstration of competence.
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> In all, no less than 48.9 percent of the tribal membership

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[58] House 1968, p. 87.

> were deemed to require protection under provisions of the Termination Act, while an additional 13.6 percent, deemed competent elected to remain under the group trust operated by the United States National Bank. Another 18.3 percent were absentee members, of whom only a very few, with allotments or other assets in trust or restricted status, were subject to Federal supervisions. It was the remaining 15.1 percent of the membership (the deceased have not been figured in), constituting persons dwelling on the reservation who elected to withdraw, that correspond to the legislative image of the deprived yet competent Indian.

One of the strange things about the Colville and Klamath bills is that in both the designation of competency is made by the Secretary of the Interior or his representative. This is strange because termination presumes that the tribe as a whole is competent. Apparently the framers of the legislation feel that there aren't enough competent Colvilles to pass judgment on individual members' competency. (An individual can contest the Secretary's decision in court.)

Not to belabor the point, but without specific criteria individual problems are bound to come up. Elmo Miller admitted having a tough time at Klamath deciding the competency of prostitutes and prisoners.

He was the one who personally decided that nearly 50 percent of the Klamath people were not fully competent. It is reliably reported that if he had been allowed to continue in his policy even a higher number would have been so declared. And though he seems to say the Colvilles are competent now it is he who will decide that many of them aren't.

INDESCRIMINATE TERMINATION

The bill removes the trust status from all lands owned by Colvilles. Not only will the trust status of the Colville Reservation be eliminated and all Colvilles cease to be Indians in a legal sense, but numerous sections owned by Colvilles on other reservations will be terminated and some currently enrolled members of other tribes who are part Colville will cease to be eligible for enrollment.

This difficulty arises from the fact that there is so much intermarriage between Colvilles and other Indians, and that the children of such marriages may be enrolled as members of either tribe and thus may inherit interests on a reservation other than the one on which they are enrolled.

Specifically, the Colville termination bill as it now stands will terminate interests inherited by Colville members in over 2,000 allotments located on reservations other than the Colville in Washington, Oregon, and Idaho.[59]

The bill makes no provision whereby the tribes affected would have first choice on buying these tracts, nor does it provide that if the tribes do buy them that they will remain in trust status.

A further complication is that many members of other tribes own inherited interests on the Colville Reservation which will be terminated by the bill.

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[59] Senate 1967, pp. 23 and 65; Senate 1965, pp. 148, 162, and 175; and House 1965, pp. 150–152 and 184.

Although these matters have been brought up numerous times at the hearings. Congress has refused to modify the bill. Since the liquidators have said that they would not object to giving the other tribes first choice of meeting the high bid,[60] it appears that it is the Congress which favors this piecemeal termination of other reservations.

It is hoped that this selective examination of the Colville termination bill has been adequate to show that it does not assure justice. In a wider perspective no bill will be adequate for that which does not take account of the cultural distinctiveness of some Colvilles.

E PLURIBUS UNUM

William James once reported overhearing the following remark: "There is very little difference between one man and another; but what little there is, is very important."

The very motto used on the seal of the United States—e pluribus unum—implies that our Nation is committed to respecting this diversity though it has seldom done so in the case of the American Indian. The irony is that all too often the reason it has failed to do so has been economic: The Indian could not be allowed to live his life as he saw fit because that interfered with economic progress and the making of a buck. The motto is on the dollar bill.

An article of this type is not the place for a head-to-toe examination of Colville acculturation even if the writer were trained for it. It is hoped that Deward Walker and his associates will fill that need with their long-awaited study. Instead we will concentrate here on three continuing values in the lives of many Colvilles which have a significant bearing on the question of termination.

The three are the Indians' concept of land, their noncompetitiveness, and a pattern of protest.

WORTH MORE THAN MONEY

No one at this time knows how many perhaps less eloquent and articulate Colvilles alive today the late Frank George was speaking for when he described the Indian concept of land at a 1965 hearing:

> Land has always been an important item in the essence of Indianhood. In the Indian concept, land is no "real estate." It has value and its products will sustain people. Above all, land is in the Indian sense something that stands for existence, identity, the place of belonging. This is the significance the Indians are asked to destroy through legislation. * * * Understandably we Indians of substantial Indian blood hesitate.[61]

An Indian woman named Margaret Piotote put it another way at one of the hearings: "We have a beautiful reservation. The Indian has a beautiful reservation. It is worth more than any money." [62]

The same value of the land can be found all over the reservation and even among some Colvilles now living elsewhere. Mrs. Bertha Russell, an educator and an enrolled Colville said in an interview at the Indian Community Center in Spokane where she works:

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[60] Interview with tribal attorney, Joseph Wicks, Okanogan, Wash., October 1968.
[61] Senate 1965, p. 143.
[62] House 1965, p. 435.

> I'm not concerned with the trees that they have assigned or anything like that. I just think that as a people we need to have that land. I, for one, don't care about the money they're going to pass out for our lands. I think the land itself is so much more important that you can't begin to compare the two. The material side of it doesn't interest me.[63]

A white official sympathetic to Colvilles who retain the traditional concept of land put it this way: "It isn't just land to them. It has tradition and saga. It has the vestige of the past which non-Indians just can't understand, because we don't have anything to relate to it." [64]

Theodore Stern speaks not specifically of land but rather of reservations in his book on the Klamath:

> For many Indian people reservations are a highly significant reality, constituting the only familiar homeland, the majority continuity with the past, the sole real property, and the principal token of the Government's resolution to honor pledges made long ago.[65]

Part of the traditional concept of land was that the Indian did not feel that he had exclusive individual ownership of it. This, in turn, led him to share with others especially his own kin.

Of course the dominant culture has similar patterns of mutual assistance, but the currents of unselfishness don't run as deep as they did and to some extent still do among such Indian groups as the Colvilles. Illustrative of the difference here is that in our culture a man attains prestige by acquiring wealth, while an Indian tradition is to attain prestige by giving wealth away.[66]

BIA social worker for the Colvilles, Joe Wagner, described the pattern which he said is still very common on the Colville Reservation: "They help each other even at great personal sacrifice to their families. Sometimes, from our point of view, it is too great a sacrifice. They always have this obligation to help one another." [67] In short, "bearing one another's burdens" which to us is an ideal is more a way of life to such groups as the Colvilles.

DISCREDIT THE VALUES

To make their points those who favor termination either ignore or attempt to discredit such Indian cultural remnants as mutual assistance and common ownership. To do so they take various tacks.

One city official in a town near the reservation said, "do you know that's something that's almost being forced on them, much to my disgust, is the preservation of this moccasin-blanket philosophy. 'Oh, that's too valuable we must preserve it.' But they don't want to ride horses, they want to ride automobiles now." [68] The confusion here is between the externals of a culture and its essentials.

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[63] Nov. 8, 1968.

[64] Name withheld by the writer.

[65] P. 266.

[66] Cf., for example, Deward E. Walker, Jr., 1966, "Problems of American Indian Education, Research Studies" (Washington State University) 34, 4:249.

[67] Interview at Coulee Dam, Oct. 13, 1968.

[68] Name withheld by the writer.

Another way of going after the values is by ridiculing them. Wilbur Hallauer said of those who maintain the traditional values that they are "primitive" and "in the diaper stage." [69]

Yet another is by distortion. One of the off-reservation whites now actively and openly promoting Colville termination is Mrs. Ruth Scofield who is in the process of writing a book about termination.

She contended in a 1965 hearing that "when any government enforces a communal status of land and collects and withholds income from that land against the wishes of capable property owners, that isn't democracy. That's communism whether it's here or in Cuba." [70]

In the full text of her statement she makes it clear that her allegations are against the Bureau of Indian Affairs. It is relatively easy to document that the Bureau has at times been overzealous in exercising its role of trustee. However, she appears to push the argument one step too far by advocating the abandonment of the trust to secure its improvement.

At a legislative committee meeting of the business council last fall Mrs. Scofield expressed the opinion that the Indian Reorganization Act (which was passed during the Roosevelt administration and which included provisions to expand the shrinking Indian land base) was motivated by Communist ideology. She apparently knows as little about Indian ideology as she does about communism.

The way the liquidators deal with the traditional ideas of ownership is by pointing out that many Colvilles live off the reservation and that only about 12 families live on tribally owned property.[71]

They are trying to make the point that tribally owned property doesn't mean much to the average Colville. The fact is that while they may not live on tribal lands a large number of Colvilles do use them for such things as hunting, fishing, gathering native foods and firewood.

And even among members who live off the reservation many come back from time to time. To many it is home, "the place of belonging" regardless of where they spend most of their days.

NONCOMPETITIVENESS

Another value which is still fairly common among the Colvilles is noncompetitiveness except in gambling and sports. It is said to be a source of difficulty for some Indian children in the public schools which most of them attend.

Rural reservation living together with the persistence of the value of noncompetitiveness has not always prepared even the adults to compete successfully in our extremely, even ruthlessly, competitive society.

For example, the liquidator who is chairman of the business council's powerful finance committee—he is also an officer of the tribe with four additional committee assignments—has had no less than 10 dockets for civil lawsuits in which he was the defendant in the county where he lives.

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[69] Hearings on S. 1442 and S. 1169, Spokane, Nespelem, and Seattle, Oct. 24–26, 1964, pp. 85–86.

[70] House 1965, p. 280.

[71] House 1968, p. 81.

All 10 had to do with unpaid or overdue debts. The last was filed in 1966 while he was on the council and pertained to an unpaid $29,000 mortgage on a piece of deeded property on the reservation which ended up in a sheriff's sale.[72]

Two other liquidator councilmen have had or are having serious money problems.[73] Between them these two hold four committee chairmanships on important committees and seats on four others as well as two of the four positions as officers of the council.

No one knows precisely how strong the influence of these Indian values is. But in considering termination it is very important to be aware of them. The implications of concepts of common ownership of the land obviously militate against the notion of individualization of reservation assets inherent in the idea of termination.

What mutual assistance means regarding termination is that, for one thing, the number of welfare cases on the reservation is inordinately small for a people whose average income is so low. Rather than seek help from the State they tend to seek the assistance of friends and relatives.

The number on welfare has been estimated at a high of 50 individuals. It is probable that the attachment to the land also has a bearing on the small number on welfare, since one of the conditions of application for welfare in Washington is that a person must first dispose of whatever land he owns and is not actually living on. This pertains to allotments only: tribal lands cannot be thus alienated by the State.

Termination will not only remove the tax exemption from Colville trust lands; it will also mean that the Indians will then have to buy things which they previously obtained from the tribal property such as deer meat, other game and firewood. For some it will only be a matter of time until they lose their lands for nonpayment of taxes. At that time it is to be expected that the number on welfare will increase.

In addition to the effects mentioned previously, noncompetiveness is thought by some to have this direct link to termination: the noncompetitive individual is inclined to go along with those who express strong views for or against termination and then not to "make a fuss" by voting one way or another.

PROTEST BY NOT VOTING

Along the same lines is the old pattern of not voting in tribal elections as a way of protesting. In the 1968 business council elections 1,364 persons voted. In the elections this year 1,539 voted. The number of qualified voters is estimated to be in excess of 2,500. (Incidentally, total vote figures would be nearly double the number of voters, because adult tribal members can vote for two candidates in all districts except Keller.)

In 1968 some 1,200 and this year about 1,000 who could have voted did not do so. Although it is not possible to say how many of these nonvoters were protesting, it is known that many members of one Coleville faction—the Coleville Indian Association—do not participate in the tribal elections as a matter of principle. And undoubtedly there are others.

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[72] Okanogan County court dockets for civil suits Nos. 11829, 12627, 13706, 14178, 14675, 15445, 15464, 15465, 15557, 16888.

[73] Interviews, October 1968.

Deward Walker explained the aboriginal pattern to which this corresponds:

> Aboriginally political decisionmaking tended to be more or less unanimous: people who disagreed with the decision simply withdrew and they were not bound by the majority rule. This is a very old and widespread Indian pattern: that you don't have rule by the majority, that you either have unanimity or you don't go along as a whole group.

He added that there is good reason to suspect that there are remnants of this pattern on the Colville Reservation and that it makes for very disturbing political activity where the Colvilles feel they are being dominated by a system in which the majority vote binds all to comply.

Does the Colville bill in any way take cognizance of this cultural pattern which has been observed on the Colville? It doesn't. In fact, it appears to go in the opposite direction by allowing a minority to dictate to the majority.

"MAJORITY"

The referendum section of the Colville bill, the section which pulls the pin on termination, specifies that the bill will go into effect on the date a majority of those who vote in the referendum approve it. In the 1968 business council elections about half of those who were qualified actually did vote. Half of that number constituted a majority of the voters.

Under the bill a similar "majority"—about 12 percent of the total membership—could put termination into effect. One wonders what would happen if there were a snowstorm on the day the referendum was held. Would 6 percent of the membership then be able to push termination through?

The business council minority—the four councilmen opposed to termination—were quick to take note of and protest this section of the bill. They suggested that it be amended so that at least half of the adults—preferably two-thirds—be required to vote yes in the referendum before it would go into irreversible effect.

We have already discussed their suggestion that two-thirds of the entire membership be represented in a positive vote for the bill before it could become effective. None of these suggestions have been accepted.

The failure of Congress to recognize and make such suggested provisions for cultural differences such as protest voting illustrates again as so often before the callousness of our Government in dealing with this Nation's indigenous people.

TRAUMA OF TERMINATION

In view of the observed cultural distinctiveness of many Colvilles—this has by no means been an exhaustive survey—the psychological implications of termination should be thoroughly examined prior to the passage of any terminal legislation. They have barely been explored.

What, for instance, happens to a man who loses his "place of belonging" or who loses the status which land ownership gives him?

There is evidence that just the threat of termination is causing widespread psychological damage on the reservation. Witness, for example, the excessive use of alcoholic beverages there and in the immediate area by Colvilles.

Public Health Service officials pointed out that excessive drinking (which may or may not be alcoholism) was one of the two major medical problems of Indians making use of the PHS clinic on the reservation.[74] The disproportionate number of arrests of Colville Indians on charges related to the use of alcoholic beverages in the reservation area tends to corroborate that statement.[75]

Many persons have stressed that the excessive use of alcohol by Indians is both a problem in itself and symptomatic of a deeper psychological problem; namely, that the Indian—the Colvilles are not alone in this though it may be more critical in their case—so misunderstood, so ill prepared and under such pressure to conform to middle-class mainstream ideas and ideals at the expense of his own ideas and ideals that excessivee drinking is his only easy recourse.

The fact is that if the Indians didn't make use of intoxicants they might be even less well adapted. For instance, they might turn to forms of antisocial behavior which would harm others as so often the demonstrations of Negroes and college students do. In a very real sense the Indians vent their hostility against themselves by drinking themselves into a kind of oblivion. And in this way the real people who have destroyed the Indian and his community are spared from being destroyed in return.

The blame for this excessive drinking which is so often found among Indians today properly rests not with them but with the dominant society which has subjected them to these excessive pressures. There were no alcoholic Indians before the white man came, and few before whites began to move in upon them so harshly. These observations are often echoed by Colvilles themselves when they ask: "why can't they leave us alone?"

Prior to termination the Congress would be advised to implement the suggestion of Menninger Foundation Dr. Edward D. Greenwood who wrote to them in 1965, "the termination bill for the Indians of the Colville Reservation appears to be detrimental to the Indians living on the reservation. The psychological and sociological trauma should be given serious consideration." [76]

REDUCING THE TRAUMA

A plan to reduce the trauma was suggested by Indian Commissioner Robert L. Bennett at a 1967 Senate hearing. The suggestion was that the termination bill be amended to allow individual members either to withdraw from the tribe and get their share in money or—and here is the departure—to remain on a reduced reservation which would continue under Federal trust. As it is now written the bill will completely terminate the Federal trust.

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[74] Interview, Dec. 3, 1968.

[75] Interviews with city police chiefs in Omak and Okanogan, Dec. 3–4, 1968. FBI statistics for Okanogan and Ferry Counties for years 1965–67, and statistics from Spokane City Police Department, 1966–68.

[76] Senate, 1965, p. 246.

The suggestion was not entirely without merit. It would have saved remaining members from complete termination and from all that implies and would have conserved a part of the tribal land base. Also, the termination of members who want it would remove one reason for factionalism. Perhaps the result would have been that remaining members would be free to develop their residual resources and their individual skills.

Nevertheless, the plan had a number of drawbacks. For one thing, most of those who oppose termination oppose even partial termination. We have seen that on the reservation 54.4 percent wanted no termination and only 9.1 percent wanted partial termination.

In addition, it should be recalled that the reservation has already been reduced half a dozen times. It should be recognized that even those who come out for another reservation reduction do so primarily because they think this is the only way to retain part of their Indian trust land.

For example, the Colville who organized the drive for the reduced reservation, Steve Cleveland, said at the hearings last summer: "* * * by opposing termination 100 percent, maybe it is too much of a gamble for me to do. I think the time is coming that some kind of bill is going to be enacted and passed."[77] The clear implication of his words is that he is totally opposed to termination but he is not willing to take an all or nothing stand.

Senator Jackson reported on this compromise plan that "the hearings * * * do not reflect substantial support for the * * * proposal, nor is there evidence that such a reduced reservation concept would inure to the economic benefit of nonterminated Colville Indians."[78]

The writer's own conclusions after reading the hearings and talking to a considerable number of Colvilles are that Cleveland has at least the 300 supporters he claims.

Also, that if it came down to a choice between complete termination or a reduced reservation (that is, that there were *no* possibility of preventing termination completely), most members opposed to termination would choose the reduced reservation as the lesser of two evils.

The last conclusion is that it is a mistake to assume, as Senator Jackson seems to, that economic considerations are the only considerations in favor of a reduced reservation. This should be amply clear from the preceding discussion of Indian values.

PART III: TERMINATION IS NOT THE END

Termination means a conclusion or an ending, but while it may mean the end of a reservation it is not the end of the Indian problem, a fact which is dramatically illustrated by the Klamath termination.

In August of 1965, the Congress authorized the Bureau of Indian Affairs to make a followup study of the effects of termination on the Klamath people. The fieldwork and final writeup were under the direction of Paul Weston, tribal operations officer for the Bureau in Portland, Oregon.

The study turned up some disturbing trends, but on the whole the results were inconclusive as was noted in the summary section "* * * the period of time since termination is far too short to assess the long-term effects of termination upon either the withdrawing or the remaining members of the tribe."[79]

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[77] House 1968, p. 152.
[78] House 1968, p. 51.

In some respects the study was inconclusive even with regard to short term effects. In an interview[80] Weston conceded that the sheriff's sales for nonpayment of property taxes had not begun when the fieldwork for the study was being done.

Under Oregon law, he explained, sheriff's sales cannot take place until property taxes are 3 years delinquent. The final termination date was 1961 and taxes did not become 3 years delinquent until November of 1965 after fieldwork for the study was virtually complete. More on this later.

The study was based on a 10-percent random sample and related to the entire membership of the Klamath Tribe including withdrawing as well as remaining members, children as well as adults. Theodore Stern describes it as "the first cut at the ball"[81] and as such here are the tentative conclusions.

ECONOMIC "SUCCESS"

In an economic sense termination was not shown to have been a complete failure: "our data reveal some slight improvement in certain important economic and social areas since Klamath termination occurred in 1961."

This conclusion contained in the summary is fleshed out with statements concerning the group trust for the members who elected to hold their property in common (the so-called remaining members) and the individual (that is involuntary) trusts for withdrawing members deemed not fully competent.

Both trust arrangements were described as "satisfactory" though there were some hints of possible trouble, especially in the individual trusts and among the members who voted to withdraw and who were classified as competent.

Some of those under involuntary trusts used threats and force to have their funds removed from the trust: "Where the moneys have been released * * * unwise liquidations and spending have frequently resulted. A small number of recipients of pro rata shares (the persons declared fully competent and given their settlement in cash) have expended the entire amounts."

The summary then goes on to point out that Oregon law recognizes persons under 21 who have married as adults and that this quirk in the law was used by a substantial number of the withdrawing minors to get their hands on the termination settlement money which was then sometimes spent unwisely.

A total of 105 trusts were thus discontinued by marriages of "irresponsible young people"—that's more than 10 percent of the total of 935 trusts established for withdrawing members.

Offsetting these unwise liquidations of funds to some extent were a considerable number of trusts which had grown substantially in value through prudent management by the trustees. Weston said that some of the minors' involuntary trusts had increased in value as much as $20,000.

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[79] House 1965, p. 338. The BIA's report on the Klamath covers pp. 327–339.

[80] Telephone interview, Jan. 17, 1969.

[81] Telephone interview, Jan. 17, 1969.

But even in these cases the private trust arrangement left much to be desired in the sense that the way it was set up the money might be growing but all too often the individual Indians were not.

In effect, they often had even less control over their resources than they did prior to termination. The system—because it was purely financial—did not encourage growth in independence and initiative which had so often been stifled by paternalistic policies of the BIA.

What was worse the BIA at least had the potential for encouraging independence and stimulating individual development which the private trustees apparently did not have.

Weston commented: "I think that if there is a flaw here it's in the basic legislation and in the manner in which these things were established to begin with. But let's not lose sight of the fact that these things were established within the framework of the laws of the State of Oregon based on the normal operations of the bank who as a corporate trustee deals in terms of the handling of the trust per se and has neither the expertise nor the personnel who have any expertise in the field of human relations necessarily." [80]

Employment and wages among the withdrawing members significantly increased after termination, the study says, further noting that the sample did not include enough family heads in the remaining group to draw any conclusions about their employment.

The study indicates that a considerable number of persons had unpaid medical bills at the time the survey was made. This was more true among withdrawing members than among remaining members. Both lost the special assistance formerly provided by the Public Health Service.

SOCIAL FAILURE

The study relates that Klamaths tend to drop out of high school at a higher rate than do other children in the county where most are concentrated. It also draws attention to the fact that Klamath children have a lower average daily atendance rate than other children in the public schools. Of course all supportive educational services formerly provided by the BIA had ceased with termination.

The crime rate among Klamaths was apparently accentuated to some extent following termination. According to the study this was especially true among minors in the withdrawing group where arrests of males doubled. Minor males in the remaining group also had more arrests after termination, but not as many more as the withdrawing minors.

The study reported that the death rate among the Klamath is considerably higher than it is for the general population and that 33 of those selected in the random sample had died. This was more than 15 percent of the total sample (213). Twenty-two of the 33 (two-thirds) were reported to have died "from alcoholism or violent causes."

There was no significant change in the number of Klamath on public assistance at the time the survey was conducted over the number who had been receiving it prior to termination, the study revealed. However, the number of children receiving personal welfare services increased. And Klamath children accounted for more than half the Klamath County foster cases at the time of the study.

In addition, "the county welfare administration was of the opinion that more Klamath families were in need, among those who had expended all their pro rata share funds, than had applied for assistance."

The reasons attributed for the failure to apply for welfare are misunderstandings on the part of the Indians of the welfare assistance available and of the ways to go about getting it. The mutual assistance pattern elsewhere alluded to in the report and the attachment to whatever land they might still have and which has to be sold to qualify for public assistance were also undoubtedly factors.

There were other results of the Klamath termination which are not alluded to in the BIA report. Here is one cited in a book entitled "The Indian: America's Unfinished Business."

> As soon as it became clear that large sums of money would be distributed to Indians, many ingenious ways were developed by unscrupulous citizens to induce the Indians to part with their cash, such as exorbitant interest rates on loans made before their inheritance was received or excessive attorneys' fees.[82]

The study says that termination settlements results in improved housing. It is not now known how much of that improved housing will end up being sold for nonpayment of taxes. Undoubtedly more of it will be as some already has—39 Klamath homes went prior to or during 1967, according to one unofficial report in a Colville hearing.[83]

On the same subject of housing, Weston said that "the homes involved in our sample were considered by our field interviewers to be pretty well within the, let's say, value received for dollar expended." He admitted the possibility that some of the older homes bought by Klamath were quite rickety.

A report of one such home was conveyed to the writer by one of the Colville council members most opposed to termination, Lucy Covington. She said she visited Klamath last spring and while there was shown a house which had cost some $11,600 and which was being put up for sheriff's sale for $800. Mrs. Covington described the house as small with inadequate foundation and flimsy construction.[84]

Sweeping generalizations are not appropriate on the basis of individual examples such as this. However, the very fact of the sheriff's sales should cause Congress to take another hard look at Klamath.

The liquidators are not unaware of Klamath though they tend to view it in a rather special light. Ruby Babcock who has been there made these comments:

> We think that a lot of the things that are said about them [the Klamaths] are propaganda * * *. You'll see the papers say that the Indians carry their money around in paper bags. Well, you can talk to people down there who wanted termination and they'll tell you it turned out pretty good. This survey

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[82] Compiled by William A. Brophy and Sophie D. Aberle (Norman 1966), p. 197.
[83] Senate 1967, pp. 133–134.
[84] Interview at her home near Nespelem, Oct. 1, 1968.

> [the Bureau survey] indicates that it did. At least I think that they're doing as well as they would have done under their tribal government.[85]

Understandably, Mrs. Babcock tends to see the bright side of termination which she favors. Perhaps more meaningful are the statements in the Bureau study concerning the critical issue; namely, that termination has little or no immediate effect on assimilation.

The study indicates that there was some movement of Klamaths away from the reservation area subsequent to termination: "although the movement of Klamath families has been into predominantly non-Indian communities, assimilation in terms of membership or participation in non-Indian social organizations, such as PTA, civic groups, and service clubs, is not taking place at any discernible or significant rate. It appears that the Klamath continue to mix socially with other Indians."

And the concluding paragraph of the study relates that: "termination as yet has not brought about great economic or social change. Indian ways and outlook are persistent and still meaningful. They reflect the preference of many individuals to retain identification with their racial and cultural heritages. This attitude may be expected to slow the process of full assimilation."

Since assimilation—the absorption of the Indians into the dominant culture—is the professed goal of U.S. Indian policy it appears that termination has little or no relevance to that goal. The authors of the report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian go so far as to list termination as the main governmental policy which impedes assimilation.[86]

Their general approach to dealing with American Indians by the Government is contained quite succinctly in the three introductory paragraphs of the book which embodies their report, "*The Indian: America's Unfinished Business*":

> The Indian himself should be the focus of all the public policy affecting him. Money, land, education, and technical assistance should be considered as only means to an end—making the Indian a self-respecting and useful American citizen. This policy involves restoring his pride of origin and faith in himself after years of crippling dependence on the Federal Government and arousing his desire to share in the advantages of modern civilization. These are deeply human considerations. If disregarded, they will defeat the best-intentioned Government plans.
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> To encourage pride in Indianness is not to turn back the clock. On the contrary, it is to recognize that the U.S. policy has hitherto neglected this vital factor as a force for assimilation, with a corresponding loss to our national culture. As a result, Indians who have already entered the greater society have tended to disdain their historical background, drawing away from it as though ashamed. Instead of seeing it as a

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[85] Interview, Sept. 27, 1968.

[86] See ch. 7 of "The Indian—America's Unfinished Business," p. 179 ff., which is titled "Policies Which Impede Indian Assimilation" and which is concerned primarily with termination.

> bridge to enable others to follow in their footsteps, they have too often misinterpreted their heritage to the dominant race and misrepresented their adopted culture to their own people. Yet men who have a foot in each world with an appreciation of both can effectively lessen the gap that divides the two and thus cross-fertilize both.
>
> No program imposed from outside can serve as a substitute for one willed by Indians themselves. Nor should their ostensible consent to a plan be deemed sufficient. Such "consent" may be wholly passive, indicating only a surrender to what seems unavoidable; or their consent may be obtained without their full understanding or before they are either able or desire to shoulder additional obligations. What is essential is to elicit their own initiative and intelligent cooperation.

As the Commission notes, consent to governmental policies affecting them is not enough to assure the Indians' intelligent cooperation. Thus the fact that House Concurrent Resolution 108 has been modified in practice so that only termination bills are now being passed which contain consent clauses [57] Is only a first step. But it is a first step: Congress has come to realize that the Indian should have at least a small voice in determining his destiny.

A long stride would be the adopting of a new Government statement of Indian policy suggested by Senator George McGovern to replace House Concurrent Resolution 108. In the late summer of 1968 McGovern's resolution got Senate approval, but it was too late for action by the House. McGovern said in a letter [58] that he plans to reintroduce the resolution in the 91st Congress in hopes that it will be passed by both Houses.

The central ideas of that resolution are that the Indians should be given a much larger role in deciding what their own future will be and that they should be assured that they will be allowed to retain their lands as long as they so desire. Self-determination is the key.

Perhaps a beneficial adjunct of this policy—if it is adopted by Congress—would be some sort of measure which would remove the mandates for termination engendered by the old policy.

For instance, how much self-determination can the Colvilles have as long as they remain under the provisions of a bill which demands their termination, or as long as bills keep getting congressional endorsement which would allow termination of the entire tribe with 12 percent or less of the tribal members voting in favor of it?

Of those who would vote for termination under present circumstances some are aware of the probable consequences and are prepared to deal with them; a way should be found to implement it on an individual basis which is fair to those persons and to the tribe as a whole.

Such fairness will remain elusive as long as Congress continues to toy with wholesale and at the same time ambiguous termination bills such as that now being proposed for the Colvilles.

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[57] Same source as note 6.

[58] Nov. 20, 1968, the resolution is contained in the Congressional Record of Oct. 13, 1966. At the time it was S. Con. Res. 114. When it was passed last year it had been redesignated S. Con. Res. 11.

IV. OTHER DOCUMENTS

A. The American Indian

90th Congress *2d Session*	HOUSE OF REPRESENTATIVES	Document No. 272

THE AMERICAN INDIAN

A MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A MESSAGE RELATING TO THE PROBLEMS OF THE AMERICAN INDIANS

March 6, 1968.—Referred to the Committee of the Whole House on the State of the Union and ordered to be printed

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To the Congress of the United States:

Mississippi and Utah—the Potomac and the Chattahoochee—Appalachia and Shenandoah . . . The words of the Indian have become our words—the names of our states and streams and landmarks.

His myths and his heroes enrich our literature.

His lore colors our art and our language.

For two centuries, the American Indian has been a symbol of the drama and excitement of the earliest America.

But for two centuries, he has been an alien in his own land.

Relations between the United States Government and the tribes were originally in the hands of the War Department. Until 1871, the United States treated the Indian tribes as foreign nations.

It has been only 44 years since the United States affirmed the Indian's citizenship: the full political equality essential for human dignity in a democratic society.

It has been only 22 years since Congress enacted the Indian Claims Act, to acknowledge the Nation's debt to the first Americans for their land.

But political equality and compensation for ancestral lands are not enough. The American Indian deserves a chance to develop his talents and share fully in the future of our Nation.

There are about 600,000 Indians in America today. Some 400,000 live on or near reservations in 25 States. The remaining 200,000 have moved to our cities and towns. The most striking fact about the American Indians today is their tragic plight:

—Fifty thousand Indian families live in unsanitary, dilapidated dwellings: many in huts, shanties, even abandoned automobiles.

—The unemployment rate among Indians is nearly 40 percent—more than ten times the national average.

—Fifty percent of Indian schoolchildren—double the national average—drop out before completing high school.

—Indian literacy rates are among the lowest in the Nation; the rates of sickness and poverty are among the highest.

—Thousands of Indians who have migrated into the cities find themselves untrained for jobs and unprepared for urban life.

—The average age of death of an American Indian today is 44 years; for all other Americans, it is 65.

The American Indian, once proud and free, is torn now between white and tribal values; between the politics and language of the white man and his own historic culture. His problems, sharpened by years of defeat and exploitation, neglect and inadequate effort, will take many years to overcome.

But recent landmark laws—the Economic Opportunity Act, the Elementary and Secondary Education Act, the Manpower Development and Training Act—have given us an opportunity to deal with the persistent problems of the American Indian. The time has come to focus our efforts on the plight of the American Indian through these and the other laws passed in the last few years.

No enlightened Nation, no responsible government, no progressive people can sit idly by and permit this shocking situation to continue.

I propose a new goal for our Indian programs: A goal that ends the old debate about "termination" of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership self-help.

Our goal must be:

—*A standard of living for the Indians equal to that of the country as a whole.*

—*Freedom of Choice: An opportunity to remain in their homelands, if they choose, without surrendering their dignity; an opportunity to move to the towns and cities of America, if they choose, equipped with the skills to live in equality and dignity.*

—*Full participation in the life of modern America, with a full share of economic opportunity and social justice.*

I propose, in short, a policy of maximum choice for the American Indian: a policy expressed in programs of self-help, self-development, self-determination.

To start toward our goal in Fiscal 1969, I recommend that the Congress appropriate one-half a billion dollars for programs targeted at the American Indian—about 10 percent more than Fiscal 1968.

STRENGTHENED FEDERAL LEADERSHIP

In the past four years, with the advent of major new programs, several agencies have undertaken independent efforts to help the American Indian. Too often, there has been too little coordination between agencies; and no clear, unified policy which applied to all.

To launch an undivided, Government-wide effort in this area, I am today issuing an Executive Order to establish a National Council on Indian Opportunity.

The Chairman of the Council will be the Vice President who will bring the problems of the Indians to the highest levels of Government. The Council will include a cross section of Indian leaders, and high government officials who have programs in this field:

—The Secretary of the Interior, who has primary responsibility for Indian Affairs.

—The Secretary of Agriculture, whose programs affect thousands of Indians.

—The Secretary of Commerce, who can help promote economic development of Indian lands.

—The Secretary of Labor, whose manpower programs can train more Indians for more useful employment.

—The Secretary of Health, Education, and Welfare, who can help Indian communities with two of their most pressing needs—health and education.

—The Secretary of Housing and Urban Development, who can bring better housing to Indian lands.

—The Director of the Office of Economic Opportunity, whose programs are already operating in several Indian communities.

The Council will review Federal programs for Indians, make broad policy recommendations, and insure that programs reflect the needs and desires of the Indian people. Most important, I have asked the Vice President, as Chairman of the Council, to make certain that the American Indian shares fully in all our Federal programs.

SELF-HELP AND SELF-DETERMINATION

The greatest hope for Indian progress lies in the emergence of Indian leadership and initiative in solving Indian problems. Indians must have a voice in making the plans and decisions in programs which are important to their daily life.

Within the last few months we have seen a new concept of community development—a concept based on self-help—work successfully among Indians. Many tribes have begun to administer activities which Federal agencies had long performed in their behalf:

—On the Crow Creek, Lower Brule, and Fort Berthold reservations in the Dakotas and on reservations in several other States, imaginative new work-experience programs, operated by Indians themselves, provide jobs for Indians once totally dependent on welfare.

—The Warm Springs Tribes of Oregon ran an extensive program to repair flood damage on their reservation.

—The Oglala Sioux of South Dakota and the Zunis of New Mexico are now contracting to provide law enforcement services for their communities.

—The Navajos—who this year celebrate the 100th anniversary of their peace treaty with the United States—furnish many community services normally provided by the Federal Government, either through contract or with funds from their own treasury.

Passive acceptance of Federal service is giving way to Indian involvement. More than ever before. Indian needs are being identified from the Indian viewpoint—as they should be.

This principle is the key to progress for Indians—just as it has been for other Americans. If we base our programs upon it, the day will come when the relationship between Indians and the Government will be one of full partnership—not dependency.

EDUCATION

The problems of Indian education are legion:

—Ten percent of American Indians over age 14 have had no schooling at all.

—Nearly 60 percent have less than an eighth grade education.

—Half of our Indian children do not finish high school today.

—Even those Indians attending school are plagued by language barriers, by isolation in remote areas, by lack of a tradition of academic achievement.

Standard schooling and vocational training will not be enough to overcome the educational difficulties of the Indians. More intensive and imaginative approaches are needed.

The legislation enacted in the past four years gives us the means to make the special effort now needed in Indian education: The Elementary and Secondary Education Act, the Education Professions Development Act, the Vocational Education Act, and the Higher Education Act.

The challenge is to use this legislation creatively.

I have directed the Secretary of the Interior and the Secretary of Health, Education, and Welfare:

—*To work together to make these programs responsive to the needs of Indians.*

—*To develop a concentrated effort in Indian education with State and local agencies.* This is critical if the two-thirds of Indian schoolchildren in non-Indian public schools are to get the special help they sorely need.

PRE-SCHOOL PROGRAMS

In the past few years we as a Nation have come to recognize the irreplaceable importance of the earliest years in a child's life. Preschool education and care—valuable for all children—are urgently needed for Indian children.

We must set a goal to enroll every four and five-year-old Indian child in a pre-school program by 1971.

For 1969, I am requesting funds to:

—*Make the Head Start Program available to 10,000 Indian children.*

—*Establish, for the first time, kindergartens for 4,500 Indian youngsters next September.*

To encourage Indian involvement in this educational process, I am asking the Secretary of the Interior to assure that each of these kindergartens employ local Indian teacher aides as well as trained teachers.

FEDERAL INDIAN SCHOOLS

Since 1961, we have undertaken a substantial program to improve the 245 Federal Indian schools, which are attended by over 50,000 children. That effort is now half completed. It will continue.

But good facilities are not enough.

I am asking the Secretary of the Interior, in cooperation with the Secretary of Health, Education, and Welfare, to establish a model community school system for Indians. These schools will:

—Have the finest teachers, familiar with Indian history, culture, and language.

—Feature an enriched curriculum, special guidance and counseling programs, modern instruction materials, and a sound program to teach English as a second language.

—Serve the local Indian population as a community center for activities ranging from adult education classes to social gatherings.

To reach this goal, I propose that the Congress appropriate $5.5 million to attract and hold talented and dedicated teachers at Indian schools and to provide 200 additional teachers and other professionals to enrich instruction, counseling, and other programs.

To help make the Indian school a vital part of the Indian community, I am directing the Secretary of the Interior to establish Indian school boards for Federal Indian schools. School board members—selected by their communities—will receive whatever training is necessary to enable them to carry out their responsibilities.

HIGHER EDUCATION

Indian youth must be given more opportunities to develop their talents fully and to pursue their ambitions free of arbitrary barriers to learning and employment. They must have a chance to become professionals: doctors, nurses, engineers, managers and teachers.

For the young Indian of today will eventually become the bridge between two cultures, two languages, and two ways of life.

Therefore, we must open wide the doors of career training and higher education to all Indian students who qualify.

To reach this goal:

—I am requesting $3 million in Fiscal 1969 for college scholarship grants, to include for the first time living allowances for Indian students and their families to help capable young Indians meet the costs of higher education.

—I am asking the Secretary of Health, Education, and Welfare to make a special and sustained effort to assure that our regular scholarship and loan programs are available to Indian high school graduates.

—I am asking the Director of the Office of Economic Opportunity to establish a special Upward Bound program for Indian high school students.

Health and Medical Care

The health level of the American Indian is the lowest of any major population group in the United States:

—The infant mortality rate among Indians is 34.5 per 1,000 births—12 points above the National average.

—The incidence of tuberculosis among Indians and Alaska natives is about five times the National average.

—More than half of the Indians obtain water from contaminated or potentially dangerous sources, and use waste disposal facilities that are grossly inadequate.

—Viral infections, pneumonia, and malnutrition—all of which contribute to chronic ill health and mental retardation—are common among Indian children.

We have made progress. Since 1963:

—The infant death rate has declined 21 percent.

—Deaths from tuberculosis are down 29 percent.

—The number of outpatient visits to clinics and health centers rose 16 percent.

But much more remains to be done.

I propose that the Congress increase health programs for Indians by about ten percent, to $112 million in Fiscal 1969, with special emphasis on child health programs.

But if we are to solve Indian health problems, the Indian people themselves must improve their public health and family health practices. This will require a new effort to involve Indian families in a crusade for better health.

Recent experience demonstrates that Indians have been successful in working side by side with health professionals:

—They have organized tribal health committees to review Indian health problems and design programs for solving them.

—They have launched new programs in sanitation, mental health, alcoholism, and accident control.

—A cooperative Indian-government project to provide safe water and disposal systems for 44,000 Indians and Alaska native families has proved successful. For every Federal dollar spent, Indian Americans have contributed another 40 cents in labor, materials and actual funds.

I am directing the Secretary of Health, Education, and Welfare to build a "community participation" component into every Federal health program for Indians which lends itself to this approach.

Essential to this effort will be a large, well-trained corps of community health aides drawn from the Indian population: nursing assistants, health record clerks, medical-social aides, and nutrition workers. These community health aides can greatly assist professional health workers in bringing health services to Indian communities.

I recommend that the Congress appropriate funds to train and employ more than 600 new community Indian health aides in the Public Health Service.

These aides will serve nearly 200,000 Indians and Alaska natives in their home communities, teaching sound health practices to the Indian people in several critical fields: prenatal health, child care, home sanitation, and personal hygiene.

Our goal is first to narrow, then to close the wide breach between the health standards of Indians and other Americans. But before large investments in Federally sponsored health services can pay lasting dividends, we must build a solid base of Indian community action for better health.

JOBS AND ECONOMIC DEVELOPMENT

The plight of the Indians gives grim testimony to the devastating effects of unemployment on the individual, the family, and the community:

- —Nearly 40 percent of the labor force on Indian lands is chronically unemployed, compared with a national unemployment rate of 3.5 percent.
- —Of the Indians who do work, a third are underemployed in temporary or seasonal jobs.
- —Fifty percent of Indian families have cash incomes below $2,000 a year; 75 percent have incomes below $3,000.

With rare exception, Indian communities are so underdeveloped that there is little, if any, opportunity for significant social or economic progress.

Two percent of all the land in the United States is Indian land. Indian lands are about the size of all the New England States and a small slice of New York. But many of their resources—oil, gas, coal, uranium, timber, water—await development.

The economic ills of Indian areas can have a major impact upon neighboring regions as well. It is not only in the best interests of the Indians, but of the entire Nation, to expand Indian economic opportunity.

JOBS

Special employment programs have been established to help meet the needs of Indians. In 1967 alone, more than 10,000 men and women received training and other help to get jobs under the Indian Bureau's programs—double the number served four years ago. These programs:

- —Provide all-expenses-paid training and placement for Indian adults.
- —Develop projects in cooperation with private industry, in which families prepare together for the transition from welfare dependency to useful, productive work.

To meet the increasing demand, I propose that the Indian Vocational Training Program be expanded to the full authorization of $25 million in Fiscal 1969—nearly double the funds appropriated last year.

In the State of the Union message, I proposed a 25 percent increase—to $2.1 billion—in our manpower training programs for Fiscal 1969.

As a part of this effort, I have asked the Secretary of Labor to expand the Concentrated Employment Program to include Indian reservations.

AREA DEVELOPMENT

The economic development of potentially productive Indian areas suffers from a lack of base capital to permit Indians to take advantage of sound investment opportunities and to attract private capital.

The Indian Resources Development Act, now pending before Congress, contains provisions to spark this kind of investment.

The central feature of this Act is an authorization of $500 million for an Indian loan guaranty and insurance fund and for a direct loan revolving fund.

These funds would:

- —Provide the foundation for the economic development of Indian lands.
- —Encourage light industry to locate on or near Indian reservations.
- —Permit better development of natural resources.
- —Encourage development of the tourist potential on many reservations.

The Indian Resources Development Act would also permit the issuance of Federal corporate charters to Indian tribes or groups of Indians. This charter gives them the means to compete with other communities in attracting outside investment.

I urge the Congress to enact this program for the economic development of Indian resources.

ROADS FOR ECONOMIC DEVELOPMENT

Without an adequate system of roads to link Indian areas with the rest of our Nation, community and economic development, Indian self-help programs, and even education cannot go forward as rapidly as they should.

Large areas inhabited by Indians are virtually inaccessible. For example, on the vast Navajo-Hopi area there are only 30 percent as many miles of surfaced roads per 1,000 square miles as in rural areas of Arizona and New Mexico.

The woefully inadequate road systems in Indian areas must be improved. Good roads are desperately needed for economic development. And good roads may someday enable the Indian people to keep their young children at home, instead of having to send them to far-away boarding schools.

I propose an amendment to the Federal Highway Act increasing the authorization for Indian road construction to $30 million annually beginning in Fiscal 1970.

ESSENTIAL COMMUNITY SERVICES

HOUSING

Most Indian housing is far worse than the housing in many slums of our large cities.

To begin our attack on the backlog of substandard housing:

- —I have asked the Secretary of Housing and Urban Development to increase Indian home construction by an additional 1,000 units this coming year, for a total of 2,500 annually.
- —I propose that the Congress double the Fiscal 1968 appropriations to $6 million in 1969—for a broad home improvement program.

These steps are a strong start toward improving living conditions among Indians, while we deal with the underlying causes of inadequate housing. But the present housing law is too rigid to meet the special needs and conditions of our Indian population.

I am therefore submitting legislation to open the door for more Indians to receive low-cost housing aid, and to extend the loan programs of the Farmers Home Administration to tribal lands.

In addition:

- —The Secretary of Housing and Urban Development will review construction standards for Indian homes to ensure flexibility in design and construction of Indian housing.
- —The Secretaries of the Interior and Housing and Urban Development will explore new low-cost techniques of construction suitable to a stepped-up Indian housing program.

COMMUNITY ACTION

Programs under the Economic Opportunity Act have improved morale in Indian communities. They have given tribes new opportunities to plan and carry out social and economic projects. Community action programs particularly Head Start, deserve strong support.

I am asking the Congress to provide $22.7 million in Fiscal 1969 for these important efforts.

WATER AND SEWER PROJECTS

Shorter life expectancy and higher infant mortality among Indians are caused in large part by unsanitary water supplies and contamination from unsafe waste disposal.

The Federal Government has authority to join with individual Indians to construct these facilities on Indian lands. The government contributes the capital. The Indian contributes the labor.

To step up this program, I recommend that the Congress increase appropriations for safe water and sanitary wsate disposal facilities by 30 percent—from $10 million in Fiscal 1968 to $13 million in Fiscal 1969.

Civil Rights

A BILL OF RIGHTS FOR INDIANS

In 1934, Congress passed the Indian Reorganization Act, which laid the groundwork for democratic self-government on Indian reservations. This Act was the forerunner of the tribal constitutions—the charters of democratic practice among the Indians.

Yet few tribal constitutions include a bill of rights for individual Indians. The basic individual rights which most Americans enjoy in relation to their government—enshrined in the Bill of Rights of the Constitution of the United States—are not safeguarded for Indians in relation to their tribes.

A new Indian Rights Bill is pending in the Congress. It would protect the individual rights of Indians in such matters as freedom of speech and religion, unreasonable search and seizure, a speedy and fair trial, and the right to habeas corpus. The Senate passed an Indian Bill of Rights last year. *I urge the Congress to complete action on that Bill of Rights in the current session.*

In addition to providing new protection for members of tribes, this bill would remedy another matter of grave concern to the American Indian.

Fifteen years ago, the Congress gave to the States authority to extend their criminal and civil jurisdictions to include Indian reservations—where jurisdiction previously was in the hands of the Indians themselves.

Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.

I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place.

OFF-RESERVATION INDIANS

Most of us think of Indians as living in their own communities—geographically, socially, and psychologically remote from the main current of American life.

Until World War II, this was an accurate picture of most Indian people. Since that time, however, the number of Indians living in towns and urban centers has increased to 200,000.

Indians in the towns and cities of our country have urgent needs for education, health, welfare, and rehabilitation services, which are far greater than that of the general population.

These needs can be met through Federal, State, and local programs. *I am asking the new Council on Indian Opportunity to study this problem and report to me promptly on actions to meet the needs of Indians in our cities and towns.*

ALASKAN NATIVE CLAIMS

The land rights of the native people of Alaska—the Aleuts, Eskimos, and Indians—have never been fully or fairly defined.

Eighty-four years ago, Congress protected the Alaska natives in the use and occupancy of their lands. But then, and again when Alaska was given statehood, Congress reserved to itself the power of final decision on ultimate title.

It remains our unfinished task to state in law the terms and conditions of settlement, so that uncertainty can be ended for the native people of Alaska.

Legislation is now pending to resolve this issue. I recommend prompt action on legislation to:

—Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

—Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

—Award them compensation commensurate with the value of any lands taken from them.

THE FIRST AMERICANS

The program I propose seeks to promote Indian development by improving health and education, encouraging long-term economic growth, and strengthening community institutions.

Underlying this program is the assumption that the Federal government can best be a responsible partner in Indian progress by treating the Indian himself as a full citizen, responsible for the pace and direction of his development.

But there can be no question that the government and the people of the United States have a responsibility to the Indians.

In our efforts to meet that responsibility, we must pledge to respect fully the dignity and the uniqueness of the Indian citizen.

That means partnership—not paternalism.

We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans.

We must affirm their right to freedom of choice and self-determination.

We must seek new ways to provide federal assistance to Indians—with new emphasis on Indian self-help and with respect for Indian culture.

And we must assure the Indian people that it is our desire and intention that the special relationship between the Indian and his government grow and flourish.

For, the first among us must not be last.

I urge the Congress to affirm this policy and to enact this program.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *March 6, 1968.*

B. An Example of Transfer: Indian Health to HEW

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION,
Silver Spring, Md., September 19, 1969.

In response to the questions in your letter of September 13, 1969, we are submitting the following comments and documents.

1. The events leading up to the transfer could be described as a continuing dissatisfaction on the part of professional health leaders and the Congress of the progress of Indian health. A number of investigations and studies had been reported. Examples are the reports of the Interdepartmental Committee on Health and Welfare Activities in 1936, the "General Report of the American Medical Association Team on the Health of the Navajo-Hopi Indian" in 1949, the Hoover Commission reports of 1949, and periodic reviews over the years by the Association of State and Territorial Health Officers. (References: Rept. 870, House of Representatives 83d Cong. first sess.; Hearings before a subcommittee of the Committee on Interior and Insular Affairs, U.S. Senate, 83d Cong., second sess. on H.R. 303, S. Rept. 1530, June 8, 1954.) It is generally believed that the principal impetus for the transfer came from the Association of State and Territorial Health Officers although many other influential organizations in the health and Indian fields supported the transfer. A list of the organizations endorsing the transfer is found on page 5 of the House Report 870.

2. There is no documented evidence that the Indian people were specifically consulted prior to the introduction of the transfer legislation. The record does indicate that many Indian groups testified for or against the transfer. The National Congress of American Indians supported the transfer as did a number of individual tribes and regional or State Indian groups. Others, notably the Oklahoma Indians, opposed the transfer.

3. Two reports which describe the progress made in Indian health since the transfer are enclosed. (To the First Americans—Third Annual Report on the Indian Health program of the USPHS and Indian Health Trends and Services 1969 edition.) Because the problem of tuberculosis was highlighted in the reports on the transfer, tables 16 and 21 are especially valuable in showing the dramatic improvement since the transfer. Other tables of special value would be table 4—infant deaths; table 7—maternal death rates; table 14—gastritis deaths and death rates; table 24—hospital admissions; table 25—average daily hospital patient census; table 26—outpatient visits; table 29—dental program; number treated by age; tables 33 and 34—family planning program; table 36—maternal and infant health; and tables 37-39—environmental health.

Please feel free to call on us for any additional information we may be able to provide.

Sincerely yours,

EMERY A. JOHNSON, M.D.,
Medical Director,
Acting Director, Indian Health Service.

Enclosures.

83d Congress } HOUSE OF REPRESENTATIVES { Report
1st Session } { No. 870

TRANSFERRING THE MAINTENANCE AND OPERATION OF HOSPITAL AND HEALTH FACILITIES FOR INDIANS TO THE PUBLIC HEALTH SERVICE

July 17, 1953.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Miller of Nebraska, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 303]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 303) to transfer the administration of health services for Indians and the operation of Indian hospitals to the Public Health Service, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That all functions, responsibilities, and duties of the Department of the Interior, the Bureau of Indian Affairs, Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians, are hereby transferred to, and shall be administered by, the Surgeon General of the United States Public Health Service, under the supervision and direction of the Secretary of Health, Education and Welfare.

Sec. 2. Whenever the health needs of the Indians can be better met thereby, the Secretary of Health, Education and Welfare is authorized in his discretion to enter into contracts with any State, Territory, or political subdivision thereof, or any private nonprofit corporation, agency or institution providing for the transfer by the United States Public Health Service of Indian hospitals or health facilities, including initial operating equipment and supplies.

It shall be a condition of such transfer that all facilities transferred shall be available to meet the health needs of the Indians and that such health needs shall be given priority over those of the non-Indian population. No hospital or health facility that has been constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred by the Secretary of Health, Education and Welfare to a non-Indian entity or organization under this Act unless such action has been approved by the governing body of the tribe, or by the governing bodies of a majority of the tribes, for which such hospital or health facility has been constructed or maintained: *Provided*, That if, following such transfer by the United States Public Health Service, the Secretary of Health, Education and Welfare finds the hospital or health facility transferred under this section is not thereafter serving the need of the Indians, the Secretary of Health, Education and Welfare shall notify those charged with management thereof, setting forth needed improvements, and in the event such improvements are not made within a time to be specified, shall immediately assume management and operation of such hospital or health facility.

SEC. 3. The Secretary of Health, Education, and Welfare is also authorized to make such other regulations as he deems desirable to carry out the provisions of this Act.

SEC. 4. The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Bureau of the Budget shall determine to relate primarily to the functions transferred to the Public Health Service of the Department of Health, Education, and Welfare hereunder, are transferred for use in the administration of the functions so transferred. Any of the personnel transferred pursuant to this Act which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions transferred to such agency shall be retransferred under existing law to other positions in the Government or separated from the service.

SEC. 5. The Act of April 3, 1952 (66 Stat. 35), and all other laws or parts of laws in conflict herewith are hereby repealed.

SEC. 6. This Act shall take effect July 1, 1954.

Amend the title so as to read:

To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes.

EXPLANATION OF H. R. 303

Background history of this legislation

Your Committee on Interior and Insular Affairs, through its Indian Affairs Subcommittee, and with the continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such.

To accomplish these aims, the Congress must consider:

1. *Enactment of legislation having as its purpose repeal of existing statutory provisions which set Indians apart from other citizens, thereby abolishing certain restrictions deemed discriminatory.*

Interrelated legislation in this area deals with—

(*a*) Restrictions applicable to Indians in personal property transactions;

(*b*) Restrictions applicable to Indians as to disposition of livestock;

(*c*) Restrictions applicable to Indians having to do with possession and sale of firearms;

(*d*) Restrictions applicable to Indians having to do with sale, possession, and use of intoxicants;

(*e*) The question of State civil jurisdiction over Indians; and

(*f*) The question of State criminal jurisdiction over Indians.

The House, in enacting H. R. 3409, has indicated its desire to repeal Federal statutes applicable only to Indians having to do with personal property, the sale of firearms, and the disposition of livestock.

The committee has reported to the Speaker H. R. 1055, which has as its purpose repeal of Federal statutes prohibiting use or possession by, or sale and disposition of, intoxicants to Indians. In addition, H. R. 1063, reported to the House as of this printing, has as its purpose the conferring of civil and criminal jurisdiction over Indians upon certain States, wherever abolishment of exclusive Federal jurisdiction is deemed practicable at this time.

As reported, H. R. 1063 would confer exclusive civil and criminal jurisdiction on five States agreeable to assumption of such jurisdiction and would give consent of the United States to all other States to assume exclusive jurisdiction of Indian civil and criminal matters at such time as their respective legislatures act affirmatively to assume jurisdiction. Not only would this procedure erase one more line of distinctive treatment for Indians as against non-Indians, but it would operate to relieve Federal agencies of a considerable workload.

2. *Enactment of legislation terminating Federal responsibility for administering the affairs of Indian tribes within individual States as rapidly as local circumstances will permit.*

Legislation is presently contemplated with respect to tribes in the States of California, Florida, Iowa, New York, and Texas. Such action, of course, necessitates agreement with the proper public bodies of the political subdivisions affected, whereby individual States assume responsibility for the services customarily enjoyed by the non-Indian residents. In addition, provision must be made for distribution of tribal assets, either to tribal control, or to individual members, whichever may appear to be the better plan in each case; provision must also be made relative to trust property responsibility in all instances.

3. *Enactment of legislation terminating Federal responsibility for administering the affairs of individual Indian tribes as rapidly as circumstances will permit.*

In addition to legislation presently being considered for individual tribes, and members thereof, the committee is directing particular attention to legislation which would free from Federal supervision and control and from all disabilities and limitations specially applicable to Indians the following: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Osage Tribe of Oklahoma, the Potawatomie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe located on the Turtle Mountain Reservation of North Dakota.

4. *Enactment of legislation providing for withdrawal of individual Indians from Federal responsibility, at the same time removing such individuals from restrictions and disabilities applicable to Indians only.*

Congress has many times in the past considered and enacted legislation having as its purpose payments of current tribal income on a pro rata basis to individual members of each tribe where such payments are consistent with the point of safety in the protection of the tribe as a whole. Such payments recognize the responsibility of the tribe and of individual members to contribute a fair share of the cost of services enjoyed by them. Complementary to this aim have been the numerous bills providing for issuance of patents in fee to individuals, thus recognizing the ability of the individual to manage his own affairs.

Your committee has reported to the Speaker H. R. 4985, which would provide a procedure for the issuance of a certificate or decree of competency to any competent adult Indian making application, conceiving it to be a progressive piece of legislation in the general area considered here. Termination of Federal trusteeship over the property of competent Indians, and a complete discontinuance of all special services for them, can be fully accomplished only if a method is provided whereby the Indian who wishes to do so can obtain a declaration of competency; eventually he should be permitted to withdraw completely from the tribe, obtain his share of tribal property, and go on his way—as a truly "first-class citizen." If enacted, H. R. 4985 would, in its operation, go a long way in narrowing down and helping to clarify the complex problem posed by individual withdrawal.

5. *Enactment of legislation terminating certain services provided by the Indian Bureau for Indians by transferring responsibility for such services to other governmental or private agencies, or to the Indians themselves.*

In this area of operation, your committee has programed legislation, or is studying approaches to legislation, aimed at termination of Indian Bureau responsibility for health, education, welfare, soil conservation, extension service, and related programs. As an initial step, the committee is reporting H. R. 303, the present bill, which deals with transfer of the Indian Health Service, and the operation by the Bureau of Indian hospital and health facilities, to the Public Health Service under the jurisdiction and control of the Department of Health, Education, and Welfare. As reported with amendment, H. R. 303 would transfer this health service, and at the same time would authorize transfer by the Secretary of that Department of such responsibility to State, county, or municipal subdivisions, or to private nonprofit corporations, whenever satisfactory arrangements for such transfer could be agreed upon.

It is emphasized that in all instances of such service termination by the Indian Bureau—as indicated by provisions of the present bill—care has been and will continually be taken to insure continuance of a high standard of service by the transferee agency.

DEPARTMENTAL POSITIONS ON H. R. 303

During the extensive hearings on H. R. 303 and H. R. 1057, a similar bill, at sessions of both the Indian Affairs Subcommittee and the full committee, committee members heard testimony of representatives of the Department of the Interior and Bureau of Indian Affairs, the Department of Health, Education and Welfare, and the Surgeon General's Office; as indicated by the reports of these departments appended hereafter, both the Department of the Interior and the Department of Health, Education and Welfare recommended against enactment of this legislation.

ORGANIZATIONS ENDORSING INDIAN HEALTH TRANSFER

Included among the list of interested organizations which have, through their representatives, advised the committee of their endorsement in principle or entirety the proposal to transfer the medical and hospital program of the Bureau of Indian Affairs to the Public

Health Service, and the Indian public health program, through the Public Health Service, to the respective States, are:

Alaska Health Service, Commissioner of Health
American Medical Association
American Municipal Association
American Public Health Association
Arizona Tuberculosis and Health Association
Association on American Indian Affairs
Association of State and Territorial Health Officers (by resolution representing Alaska, Arizona, California, Colorado, Iowa, Idaho, Kansas, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wisconsin).
Committee of State and Territorial Health Officers Association of the United States
Governors' Interstate Council on Indian Affairs (representing 11 States having sizable Indian populations)
Intertribal Council of the Sioux Nations
Minnesota Senate Indian Affairs Committee
Montana Intertribal Policy Board
Montana Tuberculosis Association
National Congress of American Indians
National Fellowship of Indian Workers
National Tuberculosis Association (recommending transfer of tuberculosis hospitals to individual States)
North Dakota Indian Affairs Commission
South Dakota Indian Affairs Commission
State Board of Health of Montana
State Department of Health of Arizona
State Department of Health of California
State Department of Health of Minnesota
State Department of Health of North Carolina
State Department of Health of North Dakota
State Department of Health of Washington

SCOPE OF INDIAN HEALTH FACILITIES AND HOSPITAL PROGRAM

The Bureau of Indian Affairs is responsible, under present law, for the total health program—both preventive and curative medicine—for all Indians registered as members of the various tribes in the United States and Indians and natives of Alaska. The population of Indians and Alaska natives is estimated to be from 400,000 to 425,000; the number who would qualify as beneficiaries for medical services at Indian hospitals is not known precisely, but testimony and opinion of Indian Bureau officials indicate the figure approximates 300,000.

In 1948 the Bureau operated 70 hospitals exclusively for Indians in the United States, including the Indians and natives of Alaska. These hospitals varied in bed capacity from 18 in the smallest to 420 in the Mount Edgecumbe, Alaska, hospital. To staff these hospitals, 89 physicians were employed in September 1948. As of February 1, 1953 (report from Assistant Commissioner dated February 11, 1953), the Bureau operated 60 hospitals, 53 of which were in the United States, 7 in Alaska. To staff these hospitals, the Bureau employed under civil service only 63 physicians, and to supplement this number, a total of 80 physicians was assigned to Indian Service hospitals by the United States Public Health Service. In the main, Public Health assignees were Reserve Corps commissioned officers obtained through the Medical Draft Act. Without the utilization of these 80 physicians, it seems clear that it would be impossible to operate the 60 hospitals under Bureau responsibility. Of the Bureau hospitals, 4 have 200 beds or more, 5 have 100 to 200 beds, 12 have 50 to 100, and 39 have 50 beds or less; total capacity in all hospitals now in operation is approximately 4,000 beds, plus 360 bassinets.

Reduction of Bureau operations

During recent years the policy of the Bureau of Indian Affairs has been to discontinue the operation of Indian service hospitals where contractual service can be obtained from private hospitals or from those which are State or locally operated. This policy appears to have been based on the difficulty encountered in properly staffing all Indian hospitals with qualified civil-service physicians, and the realization that economies could be effected through contracting on an average-per-patient-day-cost basis with private hospitals, thus reducing overhead cost for Government-owned hospitals. Since 1940, in effectuating this policy, the Bureau has closed or placed on restricted (outpatient clinic) basis 39 small (general) hospitals. Testimony of witnesses familiar with present facilities indicates that a few more hospitals might be closed, but that a large majority of those now being operated by the Bureau—by reason of their location in areas remote from non-Government hospital facilities—must be continued if any general hospital service is to be provided for Indians.

Staffing Indian Bureau hospitals

For many years the staffing of Indian Bureau hospitals appears to have been directly related to economic conditions of the country. During the depression years the Indian hospitals, though by no means completely so, were more adequately staffed with medical officers than immediately prior to the beginning of the depression in 1930, or since the beginning of World War II in 1941. With the war's outbreak there was an exodus of younger physicians from the Indian service to the military, the Veterans' Bureau, or to private practice. Since 1941 the shortage of medical officers available to operate Indian hospitals has continued to be extremely acute. In October 1948, to staff the 70 hospitals then being operated for the care of Indians, the Bureau employed only 89 full-time physicians, an average of 1.2 per hospital. Several of the smaller and more isolated Indian hospitals at that time had no resident physician on duty and no hospital in the United States having a capacity of 50 beds or less had more than 1 physician on duty; at least 1 hospital with a capacity of 100 beds—the Albuquerque tuberculosis sanatorium—had only 1 physician to care for its 100 active cases of tuberculosis.

Expert medical witnesses appearing before the committees, as well as representatives of the departments affected by the proposed transfer, ascribed the difficulty in staffing Indian Bureau hospitals with civil service medical personnel to many factors. This problem, which has been continuous over a period of many years, according to these witnesses, was thought to be due to the following:

1. Salaries paid medical personnel under civil service have been consistently low as compared to salaries and benefits allowed commissioned medical personnel of the Army, Navy, and Public Health Service, or as compared to salaries paid by the Veterans' Bureau.

2. A large majority of Indian service hospitals are small hospitals located in extremely isolated places and away from centers of population where medical personnel have no contact with professional groups and but limited social contact with lay groups.

3. No Indian service hospitals have, to the present time, been approved by the American Medical Association as teaching hospitals and at which medical interns may be employed and given credit for training received. Due to the lack of accreditation of Indian service hospitals, it is next to impossible to recruit qualified medical personnel for service with the Bureau on a career basis.

4. Due to limited personnel available, there is keen competition on the part of medical officers employed under civil service to be assigned to and retained in the few larger hospitals of the Bureau which are located in or near centers of population. Likewise, there is keen competition on the part of agency superintendents to obtain and retain the services of medical personnel, and often there is understandably, resistance on the part of agency superintendents or area directors to the transfer of medical personnel from one station to another. Occasional interference of this sort makes it impossible for the branch of health to be operated as a unit on a nationwide basis and in accordance with an approved plan of procedure such as is possible by the commissioned medical services of other governmental agencies.

5. Details of medical officers to Indian service hospitals are, in the main, to small isolated hospitals for indefinite periods. This is oftentimes a necessity for lack of replacements who, rather than accept such details, will resign from the service to accept employment in other agencies or to enter the private practice of medicine. This situation will, in the opinion of witnesses, only be relieved if and when sufficient personnel is employed to permit frequent changes in details from the smaller isolated hospitals to larger medical centers. No detail to a small and isolated hospital, it is felt, should be for a period longer than 2 years. Only a larger organization, such as the Public Health Service, employs adequate personnel to permit frequent interchange of personnel in the many small Indian hospitals.

6. The Bureau of Indian Affairs does not make provision for postgraduate study necessary to keep its professional personnel abreast of current medical procedure. Except in very occasional instances, the Bureau does not employ professional personnel accredited by specialty boards.

PREVENTIVE MEDICINE FOR INDIANS

For many years, the Bureau of Indian Affairs has furnished limited public health nursing service for Indians to the extent that public health nurses have been available to fill authorized positions. This in the main, has been a direct service as a Bureau program administered from Washington through the area and agency offices. Since the beginning of World War II, however, there has been a shortage of needed nurses to fill the 87 positions authorized to cover the Indian reservations in the continental United States and to provide nursing service for the Indians and natives of Alaska.

In 1949, 1 sanitary engineer and 2 general sanitarians were placed on duty on the Navaho Reservation, through the Navaho-Hopi rehabilitation 10-year program, to promote water sanitation and for the improvement of environmental sanitation in general. During recent years, where it has been possible to do so, the Indian Bureau has entered into contracts with State or local units for health services to be provided Indians who reside in counties where State or local health services can be extended to include reservation Indians. Contracts for public health services to reservation Indians are now in effect with approximately 15 county health departments and with the State Department of Health of Oklahoma for district health services to be provided for nonreservation Indians in 27 counties of that State. Contracts are also in effect with the State Departments of Health of Nevada and Idaho for public health services to be provided by State department of health personnel for all Indians on a statewide basis. Experience has demonstrated that, although the services provided by State and local health organizations are, in efficiency, equal to or better than previously available, the scope of such services must be expanded to effectively cope with the much higher prevalence of communicable disease among Indians than that which exists among the general population. A very large majority of reservation Indians in the United States receive no public health service other than limited nursing service provided by the Bureau of Indian Affairs.

Tuberculosis among Indians

One of the most serious problems faced by any medical group serving the Indians is that posed by the incidence of tuberculosis, a disease widespread among tribes in both the United States and Alaska. The attention of Congress has many times been directed to the gravity of the situation with respect to the Navaho Tribes of the Southwest, and in the Plains States generally.

The 1950 report of a medical team investigating the health of the Navaho Indians for the American Medical Association underscores the seriousness of the tuberculosis incidence, and is applicable to most other North American Indians. The report reveals:

Tuberculosis on the Navaho Reservation is approximately 10 times the average for the United States. The death rate has been slightly above 300 per 100,000, compared to 30 in the general population. The AMA team found that the turnover in medical personnel in recent years has been so rapid that physicians have not remained long enough to form a valid opinion of the situation; records are so incomplete and wanting in content and continuity that reliable consecutive statistical data is not available. Tuberculin testing and mass roentgenographic surveys indicate widespread infection and a high incidence of manifest pulmonary tuberculosis. The report continues:

> The accumulated evidence suggests that the relatively high incidence of tuberculosis and the high morbidity and mortality from this disease among the Navaho Indians are not a matter of racial susceptibility and innate lack of resistance, but are due to provocative environmental influences, including insufficient and improper food, inadequate health education, ineffective methods of casefinding, insufficient beds for known cases, haphazard management, plus serious therapeutic deficiencies.
>
> Adequate care of the tuberculous can be achieved only through teamwork between physicians possessing all the diagnostic and therapeutic skills, technical knowledge, and experience necessary to encompass and negotiate the overall task. Such a service on the Navaho Reservation is impossible under present conditions.
>
> Because of the prevailing environmental conditions and the general high incidence of tuberculosis among the American Indians as a whole, it is highly probable that similar measures would be of value in other reservations throughout the country * * * we (must) consider that the increasing Indian population, coincident with diminishing resources on the reservations, makes it necessary for an ever-increasing number to seek employment off the reservations. As a

> consequence, the stage is set for a dangerous seeding of fertile soil with tubercle bacilli from these overfilled reservoirs.
>
> At present, the Navaho Reservation with this high tuberculosis mortality rate serves as a focus of infection * * *. As previously indicated, this statement applies to other reservations. After many years of haphazard medical care, the Government should clean up these tuberculosis "hot spots."

A similar situation exists in Montana, considered typical among the Plains States having substantial Indian populations. The State has 7 reservations with an Indian population approximating 22,000, or 3 percent of the State's population. As recently as 1948, the State had 403 deaths per 100,000 population among the Indians, while the non-Indian rate was 27.3 per 100,000 population; at that time, there were only 10 beds available for tubercular Indians, while there were 275 beds for non-Indians. By 1951, the death rate, through intensive activity of the Montana Tuberculosis Association, and the National Tuberculosis Association Committee on Tuberculosis Among Indians, working with congressional and State legislative assistance, reduced the Indian death rate to 165 per 100,000 among Indians, and to 13.3 among whites. Through congressional and State legislative action, a hospital wing of 100-bed capacity for the care of Montana citizens of Indian blood is in process of completion.

In light of American Medical Association findings, and its own conclusion that the whole problem could best be attacked on the State level, the board of directors of the National Tuberculosis Association considered the provisions of H. R. 303, and H. R. 1057, its companion, and it was the NTA board decision that the enactment of this legislation will provide an opportunity for developing and improving health and hospital services for the American Indian. These groups recommended amendments which would provide for the ultimate transfer of the responsibility for health services and hospitals for Indians from the Federal Government to the State health agencies serving the general population.

Public Health Service facilities, personnel

The United States Public Health Service in the 1954 fiscal year will operate 16 general hospitals, 2 neuropsychiatric hospitals, 2 tuberculosis hospitals, and a hospital for patients with Hansen's disease (the National Leprosarium). Only 3 of these hospitals are below 100-bed capacity; the remainder vary in bed capacity from 150 to more than 1,000. Total capacity is 6,430 beds. In addition, the Public Health Service operated 18 full-time clinics and provided part-time services through private physicians designated to furnish emergency care in communities inaccessible to existing facilities. Several of the general hospitals under this Service are affiliated with medical schools as teaching hospitals, and a majority of them are accredited by the American Medical Association for the training of interns and for residencies leading to accreditation for national board approval in the various medical specialties.

As of January 1952, more than 1,300 physicians were employed by the Public Health Service, with an approximate average of 700 physicians at all times actively engaged in clinical medicine, many of whom are accredited specialists. The Service for many years has provided medical and hospital care for the United States Coast Guard, Federal Bureau of Prisons, and other Federal agencies. Its widespread research activities, comprising seven institutes for study in the causes, diagnosis, prevention, and treatment of the diseases and disabilities of man, will be greatly expanded this year upon completion of the large Clinical Research Center at Bethesda, Md.

POSITION OF THE DEPARTMENT OF THE INTERIOR

In recommending against enactment of H. R. 303 and H. R. 1057 the Department of the Interior submitted the following report:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., May 5, 1953.

Hon. A. L. MILLER,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. MILLER: Reference is made to your request for a report on H. R. 303, a bill to transfer the administration of health services for Indians and the operation of Indian hospitals to the Public Health Service. The following report applies also to a similar bill, H. R. 1057.

I recommend that these bills be not enacted.

The bills would transfer to the Public Health Service of the Department of Health, Education and Welfare, the entire health program that is now being conducted by the Bureau of Indian Affairs. This program is generally regarded as having two distinct but functionally interrelated parts: (1) a disease-preventive program to improve public health and reduce the incidence of disease among Indians who live on reservations in more than 20 States and in the Territory of Alaska, and (2) a medical care and hospital program to care for sick Indians, which involves the operation of 60 hospitals, sanatoria, and medical centers, containing approximately 3,400 beds, in the United States and Alaska. However, at the local level where health services are actually rendered, especially in sparsely settled areas, it has been found necessary to combine preventive and medical care services to a considerable extent.

The various service programs for Indians are so closely related that it is deemed inadvisable to separate the administration of the health services from the administration of other services to Indians. The education, welfare, law and order, and health functions of the Bureau are particularly interrelated. It is the policy of the Department to work toward transfer of all functions of the Bureau of Indian Affairs to State, local, or community agencies, or to the Indians themselves and ultimately to achieve complete integration of Indians into the general population. As local community programs for health, education, welfare, and law and order services have improved, the need for special Indian facilities has diminished and it is believed that it would be unfortunate to continue indefinitely to set Indians apart in special hospitals as Federal beneficiaries. In making the transitional arrangements for Indians to obtain needed services in the same manner as all other citizens, it is essential that the closest possible coordination should be preserved between the various phases of the Indian program. It is believed that such coordination would be far more difficult if, as has been suggested in connection with the discussion of H. R. 303, preventive health services were to be administered by the State or county, medical and hospital care by the Public Health Service, and welfare, education, law and order, and resource development programs by the Bureau of Indian Affairs.

In giving consideration to this bill it is suggested that the committee and the Congress also consider certain basic policy questions as to the Federal Government's responsibility for Indian health, and that if the proposed bill is enacted these questions be clarified by appropriate amendments to the bill:

1. The bill should define the Federal responsibility for providing health services to Indians.

(*a*) *Preventive services.*—Sparsely settled population and high illness rates increase the per capita cost of such services to Indians above that for the general population. Despite great progress in improvement of local health work since 1936, when the Federal grant-in-aid program was started by the Public Health Service under title VI of the Social Security Act of August 14, 1935, as amended (49 Stat. 620, 634, as amended; 42 U. S. C. 801 et seq.), this general grant-in-aid program alone was not proved to be sufficient to stimulate development of adequate local health services in many reservation areas. The method used by the Bureau of Indian Affairs to obtain public health services for Indians through

State and local health departments is to contract for such services under the authority of the Johnson-O'Malley Act of April 16, 1934, as amended (48 Stat. 596, as amended; 25 U. S. C. 452 et seq.). This method, which requires performance of specific services for a sum agreed upon in the contract, differs fundamentally from the grant-in-aid method, which provides funds on a formula basis for general health purposes within the State. It is suggested that administration of these two different methods by a single agency would present complications and that consideration should be given to some special formula for granting extra funds to States with Indian populations. If direct Federal services are needed in some areas until State and local preventive programs are better developed, the authority of the Public Health Service to furnish such services directly may need definition.

(*b*) *Therapeutic services—medical and hospital care.*—Definition of Indians eligible for services as Federal beneficiaries is needed. Are Indians to receive free services as a matter of right without respect to ability to pay? Under what circumstances should an individual or a tribe continue as a Federal beneficiary?

2. The bill should define the powers of non-Federal health agencies to enter on reservations to enforce sanitary, health, and quarantine laws and regulations. At the present time, State and local health agencies attempting to furnish preventive health services to Indians are hampered in so doing, and are often reluctant to accept responsibility because of lack of enforcement powers.

3. The bill should authorize the Public Health Service to enter into agreements with tribes.

4. The bill should codify existing statutory authorities for health services to Indians currently vested in this Department so as to define clearly what authority and responsibility are being transferred to the Public Health Service.

5. Consideration should be given by the Congress to the present administrative and appropriation structure of the Bureau of Indian Affairs, under which the health program is dependent upon the Administrative Division of the Bureau (and upon separate appropriations) for necessary supporting services in personnel, budget and finance, property procurement and control, and construction, maintenance, and repair of buildings and utilities used for health purposes. Appropriate provision would need to be made for these services in the budgetary adjustments made between the two agencies in connection with the transfer. Provision should probably be made for the transfer to the Public Health Service of such funds as the Director of the Bureau of the Budget finds are available for the discharge of the Bureau of Indian Affairs functions, responsibilities, and duties in connection with its hospital and health program. Special provision may be needed for the transfer of construction funds for several hospital and health clinic projects currently under construction but not yet in operation.

6. Consideration should be given to plans and procedures for expediting transfer of these health functions from the direct supervision of a Federal agency to States or local governments or to community or private health organizations with proper provision for the continuation of necessary services.

It is noted that H. R. 1057 differs from H. R. 303 and from S. 132 in omitting section 2. In the event that section 1 of H. R. 1057 were to be enacted, it would be desirable that section 2 of H. R. 303 or an appropriate modification thereof be included since the Public Health Service could not properly be expected to discharge the responsibilities transferred by section 1 unless personnel, records, and property were also transferred.

The Bureau of the Budget has advised concerning the relationship to the program of the President of S. 132, a companion bill to H. R. 303, as follows:

"You are advised that while there would be no objection to the submission of such report as you consider appropriate, this office concurs with the views of the Department of Health, Education, and Welfare and does not endorse the transfer of functions proposed by S. 132. In the absence of a showing of economies, improvements in efficiency, or more effective administration in the discharge of the Federal Government's responsibility for health services to Indians and the operation of Indian hospitals, it is the view of this office that the proposed changes in organization would be undesirable."

Sincerely yours,

Orme Lewis,
Assistant Secretary of the Interior.

POSITION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Department of Health, Education, and Welfare, proposed to be the transferee agency under terms of H. R. 303, in recommending against enactment submitted the following report:

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Washington 25, April 22, 1953.

Hon. A. L. MILLER,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 23, 1953, for a report on H. R. 303, a bill to transfer the administration of health services for Indians and the operation of Indian hospitals to the Public Health Service.

This bill would transfer hospital and public health functions of the Bureau of Indian Affairs, Department of the Interior, to the Public Health Service, Department of Health, Education and Welfare. Personnel, records, and property used primarily for the performance of these functions would also be transferred to the Public Health Service.

There is general agreement among all who are familiar with the health status of our Indian population that the present quantity and quality of health services available to them leave much to be desired. Hospitals have long been under-equipped and understaffed, although notable improvements in this respect have recently been made. Environmental sanitation and other preventive health programs are particularly inadequate. We seriously doubt, however, that significant improvement in health services or conditions could be achieved simply by the device of transferring administrative responsibility from one Federal agency to another.

Such transfer in itself would not overcome the fundamental difficulties which have retarded the improvement of Indian health conditions—including problems of financial support, sparseness of the settlements of many of the tribes, difficulty in recruiting professional personnel for isolated stations, and the lack or inadequacy of community hospitals and local health departments in many of the areas surrounding Indian reservations. Furthermore, the administrative separation of health services from other related Indian services—particularly those in the field of education and public welfare—might create new administrative difficulties and actually retard the overall improvement of living conditions on Indian reservations.

The Public Health Service has for a number of years been assisting the Bureau of Indian Affairs in the planning and administration of health services to Indians and substantial numbers of professional officers of the Service have been detailed to duty on Indian reservations. We believe that continuation of such assistance under a unified administration for all related services to Indians is preferable, on the whole, to a division of responsibility between Interior and the Public Health Service. Unless there are factors or considerations which have not been brought to our attention, therefore, we could not endorse the transfer of functions proposed in H. R. 303.

If such a transfer should be approved, however, there are a number of administrative questions which require clarification. Since special problems will attend determinations as to which funds, facilities, personnel, and records should be transferred, the bill should assign to some agency or officer, probably the Director of the Bureau of the Budget, final authority to determine these matters. It would also be desirable to clarify the relationship of Indian health activities to other medical care programs of the Public Health Service. For example, would Indians be regarded as full-fledged beneficiaries of the Public Health Service, eligible for admission to any hospital or outpatient clinic of the Service? Conversely, would Indian hospitals be open to any other beneficiaries of the Service?

If we can be of further assistance to your committee, please do not hesitate to call upon us.

The Bureau of the Budget advises that there is no objection to the submission of this report to your committee.

Sincerely yours,

OVETA CULP HOBBY, *Secretary.*

OPERATION OF H. R. 303, AS REPORTED

The committee, in recommending enactment of H. R. 303, has substituted new language based on recommendations of the departments affected, which recommendations were suggested in the committee reported legislation providing for transfer of the Indian Health Service.

As reported, H. R. 303 provides for the transfer of all functions, responsibilities, and duties of the Department of the Interior, the Bureau of Indian Affairs, Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians, to the Surgeon General of the United States Public Health Service, under the supervision and direction of the Secretary of Health, Education, and Welfare.

Effective date of the transfer provisions, as well as repealing provisions hereafter referred to, is July 1, 1954.

It will be noted that the transfer specifically includes the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds to the Public Health Service, as determined by the Director of the Bureau of the Budget to relate primarily to maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians.

In addition to the departmental transfer, H. R. 303 as reported authorizes the transferee agency, through the Secretary of Health, Education, and Welfare, to in turn contract for transfer of such responsibility to any State, Territory, political subdivision of any State or Territory, or any private nonprofit corporation, agency, or institution, "whenever the health of the Indians can be better met thereby." Provision is made for thereafter revesting responsibility in the Public Health Service if the subsequent transferee agency is not properly serving the needs of Indians.

To assure emphasis on service to Indians, two safeguard provisions are included in the reported bill:

(1) A requirement that any transfer from the Public Health Service shall include a condition that all facilities transferred shall be available to meet the health needs of the Indians, and that such health needs shall be given priority over those of the non-Indian population; and that—

(2) No hospital or health facility constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred by the Secretary of Health, Education, and Welfare to a non-Indian entity or organization unless such action has been approved by the respective tribal governing body or bodies for which such hospital or health facility has been constructed or maintained.

H. R. 303, as reported, would also repeal on the effective date of the act, the act of April 3, 1952 (66 Stat. 35). The act repealed provided authority for transfer by the Secretary of the Interior to contract with non-Federal agencies for transfer of responsibility over Indian hospital or health facilities under the same terms and conditions as are generally included in H. R. 303. In addition, the act repealed authorized the Secretary to make Indian facilities available to non-Indians, and to contract for medical attention for Indians, under conditions set forth.

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

In recommending enactment of H. R. 303 as reported, your committee wishes to make clear the following:

(1) The transfer provided for in no way abrogates the responsibility of the Federal Government—imposed by treaty of otherwise—for the health needs of the Indians. Consideration of all factors points to the conclusion that this responsibility can best be met by the established Public Health Service of the United States.

(2) Recommendation of transfer from the Indian Health Service is in no way intended as criticism of the past administration of the program by the Department of the Interior, the Bureau of Indian Affairs, or the respective commissioners of Indian Affairs. Your committee has attempted to spell out the problems inherent in administration under those agencies. The basically nonmedical character of the Indian Bureau, together with personnel limitations of the Indian Health Service recognized by the overwhelming weight of expert medical opinion, dictate a new approach to the problem. Fund limitations alone have not caused inadequate service for the Indians; the committee is convinced that past administration has produced maximum efficiency and service despite inherent handicaps, with progressively better results over the years.

As set out above, the Indian Health Service today actually utilizes in the main physicians loaned from the Public Health Service, with slightly less than half of the total under civil service through the Indian Bureau. Personnel in the latter class—with their long experience in the field—are transferred under this legislation, and will be an invaluable part of the Public Health Service program for Indians.

(3) Transfer of the Indian Health Service is part of the pattern of legislation deemed necessary by the committee to effectuate the eventual termination of all Federal responsibility for providing Indian services.

For a number of years, the Public Health Service has been assisting the Bureau of Indian Affairs in the planning and administration of health services to Indians; in addition policy has called for turning over this responsibility to State or local agencies wherever feasible—all aiming at erasing the line of distinction between services for Indians and the non-Indian population. For many years, State health agencies and numerous national health groups have emphasized the desirability of the transfer anticipated by this legislation.

Your committee feels that transfer of the health program is only an initial step, that Indian Bureau operations in the field of education and in the field of welfare should be transferred to other agencies serving these needs for non-Indians as soon as practicable programs can be worked out.

(4) Experience dictates the desirability of transfer from Federal to non-Federal agencies of Indian health responsibility whenever practicable.

At the present time, State and local health officials have no jurisdiction on Indian reservations except by special permission, authorized by resolution of Indians concerned and with the approval of the Secretary of the Interior. The backlog of disease among Indians as a racial group is so much greater than among the general population that the cost of providing health services for Indians would far exceed the cost of providing adequate similar services for the general population without general Health Service guidance and assistance.

From an administrative standpoint each of the several States in which Indian reservations are located already have the basic organization to provide general supervisory services for Indians—through State departments of health. Additional nurses, sanitarians, and other Public Health personnel—working with these established agencies and the Indian tribe or tribes served—would deal with the health problem on a State level. Such programs, carried out under State and local supervision as provided for in this legislation, will help to teach all Indians that they should look to their State or local health departments for public health services on the same basis as these services are provided for other racial groups. The program already put into effect so successfully in Minnesota has demonstrated the gratifying results which can be achieved through transfer of responsibility from Federal to non-Federal agencies.

Finally, brief comment should be made on the economic aspects of the proposed transfer of this service. The transfer date in the act coincides with the end of the 1953 fiscal year; the committee anticipates that to the extent responsibility for administering the Indian Health Service has been terminated with respect to the Department of the Interior, that Department will eliminate from its appropriations requirement funds earmarked for the Health Service. Correspondingly, Department of Health, Education, and Welfare appropriations requirements are expected to increase in proportion to the demands of the increased responsibility for Indian Health Service. The committee is convinced that this transfer will better the quality and amount of the service received per Federal dollar expended, and, further, that the Public Health Service, through its broader operation, can effect definite economies in specific areas of activity. Finally, the committee feels that the Public Health Service, with the assistance of personnel transferred, will be in a better position than is the Bureau of Indian Affairs Health Service to study and evaluate the long-range requirements for development of an efficient, progressive health program for our Indian citizens.

CHANGES IN EXISTING LAW

In compliance with clause 3, rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as amended, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF APRIL 3, 1952 (66 STAT. 35)

[That in any areas where there are inadequate hospital beds and health facilities available to serve the non-Indian population, the Secretary of the Interior is authorized in his discretion to make available to non-Indians, hospital and health facilities operated by the Indian Bureau which are not being utilized for Indians, at such fees and under such terms and conditions as he may prescribe: *Provided*, That the fees charged will not be less than the per diem cost per patient of operating and maintaining the hospital or the health activity.

[SEC. 2. Whenever the health needs of the Indians can be better met thereby, the Secretary of the Interior is authorized in his discretion to enter into contracts with any State, Territory, or political subdivision thereof, or any appropriate Federal, State, Territory, or political subdivision thereof, or private nonprofit corporation, agency, or institution providing for the transfer by the Indian Bureau of Indian hospitals or other health facilities, including initial operating equipment and supplies. It shall be a condition of each such transfer that all facilities transferred shall be available to meet the health needs of the Indians and that such health needs shall be given priority over those of the non-Indian population. No hospital or health facility that has been constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred to a non-Indian entity or organization under this section unless such action has been approved by the governing body of the tribe, or by the governing bodies of a majority of the tribes, for which such hospital or health facility has been constructed or maintained.

[SEC. 3. The Secretary of the Interior is also authorized to enter into contracts with any physicians duly licensed by any State or Territory to provide medical attention or services to Indians, and to expend under such contract funds appropriated by Congress for medical attention to Indians.

[SEC. 4. Any contracts entered into pursuant to this Act shall provide that the standards of services to be rendered to Indians shall not be less than the standards established by the Secretary of the Interior; that the same services shall be rendered to Indian patients as is rendered to other patients and that Indian patients shall not be segregated from other patients.

[SEC. 5. The Secretary of the Interior is also authorized to make such other regulations as he deems desirable to carry out the provisions of this Act.

[SEC. 6. Proceeds to be derived under section 1 shall be deposited in the Treasury to the credit of the appropriation from which the hospitalization or medical services are provided, and shall be available for expenditure for the purposes for which the appropriation was made.]

C. The Erosion of Indian Rights, 1950–1953: A Case Study in Bureaucracy

By FELIX S. COHEN †, from the *Yale Law Journal*, February 1953

OUR 450,000 American citizens [1] who are members of Indian tribes are probably the only racial group in the United States whose rights are more limited in 1953 than they were in 1950. The erosion of Indian rights in this period and the factors which contributed to that erosion can be fairly evaluated only if we also view the background of Indian progress during the 21-year period from 1929 to 1950. During that period more than a score of discriminatory restrictions upon Indians were abolished; the size of Indian landholdings increased, instead of decreasing, for the first time in American history; the real income of most Indian families doubled or tripled; and the Indian death rate was cut in half. During that period the Bureau of Indian Affairs was a leading participant in almost every battle for Indian rights.

Beginning with the administration of Commissioner Rhoads, appointed by President Hoover in 1929, the Bureau of Indian Affairs inaugurated a determined effort to do away with the major legal discriminations from which Indians then suffered. The Meriam Report,[2] published in 1928, at the request of Secretary of the Interior Hubert Work, pointed to the two most serious deficiencies in Indian administration: the exclusion of Indians from the management of their own affairs, and the poor quality of public services (especially health and education) rendered by public officials not responsible to the Indian people they served.

From 1930 to 1950, the Bureau respected the right of Indians to hold their own elections and to select their own representatives and attorneys.[3] Two or three slips from this standard may be found in this 20 year period, but the whole direction of Indian administration was towards increasing freedom.[4]

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†Visiting Lecturer in Law, Yale Law School.

Factual information presented in this article for which no specific authority is cited has been gathered in the author's present capacity as general counsel to several Indian tribes and to the Association on American Indian Affairs, Inc., and in his earlier capacity as counsel to the Secretary of the Interior and as Associate Solicitor and Chairman of the Board of Appeals of the Interior Department.

[1] All American Indians, whether or not living on a reservation, who had not previously been accorded that status, were declared to be citizens of the United States. 43 STAT. 253 (1924), 8 U.S.C. § 601 (1946). The special laws and regulations relating to Indians are analyzed in COHEN, HANDBOOK OF FEDERAL INDIAN LAW (4th ed. 1945) (cited hereinafter as COHEN, HANDBOOK).

[2] MERIAM & ASSOCIATES, THE PROBLEM OF INDIAN ADMINISTRATION (1928). This report and other matters briefly mentioned in the following paragraphs are discussed in more detail in COHEN, HANDBOOK 26-7, 83-7.

[3] See, *e.g.*, Memorandum of Solicitor, Department of Interior, Jan. 23, 1937, in which it is declared: "A consideration of the general background and purpose of the Indian Reorganization Act [48 STAT. 984 (1934), 25 U.S.C. §§ 461 *et seq.* (1946)] leaves no doubt that the purpose of the statutory provision in question was to increase the scope

In 1932, Congress passed the famous Leavitt Act,[5] authorizing cancellation of a mass of unjust debts that had been fastened on Indians by past administrations for wasteful and unjustified projects never authorized by the Indians charged.

In 1934, all administrative restrictions upon Indian freedom of religion were repealed by Secretary Ickes and Commissioner Collier; orders forbidding use of Indian languages by Indian school children were also repealed.[6] In the same year, Congress abolished the dictatorial powers of the Indian Bureau to issue passports for the Indian country and to remove critics of the Indian Bureau from Indian reservations, thus giving Indians the same rights of association enjoyed by other races.[7]

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of responsibility and discretion afforded the tribe in its dealings with attorneys." In line with Solicitor Margold's opinion are the Interior Department regulations governing the employment of attorneys by Indians, approved May 2, 1938, by Assistant Secretary Oscar L. Chapman, 25 CODE FED. REGS. § 15.1-15.25 (1938).

[4] See THE NEW DAY FOR THE INDIANS (1938). This was a non-partisan appraisal of Indian progress published under the sponsorship of 56 eminent editors, educators, churchmen, writers, and scientists interested in Indian problems. The survey presented the following contrast between Indian rights in 1938 and Indian rights as they had existed ten years or more before that date:

RIGHTS

The Old	*The New*
Rights of Indians almost solely dependent on the Indian Bureau, which maintained itself as a monopoly in Indian administration. Tribal self-government destroyed.	Indians granted fundamental rights enjoyed by white citizens; power of Indian Bureau over Indians (tribal funds, civic authority) curbed. Cooperation gained from Soil Conservation Service, Social Security Administration, Civilian Conservation Corps, Works Progress Administration, state boards of education, state welfare agencies, etc.
Historic policy of breaking up Indian cultural, social and economic life in favor of absorption by the dominant white population.	Right of Indians to their own languages, ceremonies, arts, and traditions respected and encouraged.
No legal assurance of civil liberties for Indians. Indians subject to arrest, trial and imprisonment by Indian Service officials and by judges controlled by reservation superintendents.	Gag and sedition laws repealed. Religious and cultural liberty affirmed. System of justice for Indians reorganized, safeguarded from official control of Indian courts, whose jurisdiction is carefully defined.
Indian Bureau, through good administrations and poor, dealt with Indians *individually*, on paternalistic basis.	Indian Bureau fosters democratic principles and the right to negotiate through representatives of Indians' own choosing.

[5] 47 STAT. 564 (1932), 25 U.S.C. § 386(a) (1946).

[6] See COHEN, HANDBOOK 176 n.348.

[7] 48 STAT. 787 (1934). See also, Annotation, 25 U.S.C.A. § 171 (Supp. 1951).

In the same year, Indians won from Congress the right to establish corporations and councils with powers not subject to administrative revocation; gained the right to veto any disposal of tribal property by the Indian Bureau; secured authorization for a $10,000,000 credit fund[8] to be administered by the Indians themselves; and won a statutory exemption from civil service requirements for all jobs in the Indian Service.[9]

In 1935, Congress set up a special agency to help Indians market the products of their native arts and crafts, remnants of a culture that had survived a century of Bureau efforts at eradication.[10] In 1936, Congress acted to grant tax exemption to Indian homesteads purchased with Indian trust funds.[11]

Beginning in 1936, six states which had always denied the franchise to Indians retreated from this position. The last two holdout states, Arizona and New Mexico, yielded in 1948 to adverse decisions, in suits brought by Indians.[12] In each case Indians secured the right to serve on juries along with the right to vote.

In 1938, the Supreme Court recognized that minerals and timber on Indian reservations belonged to the Indians and not to the Government.[13] In the same year Congress acted to assure Indians of the right to lease their own minerals.[14]

In 1940, Congress passed legislation to refund to Indians taxes that they had been forced to pay when thousands of tax-exempt trust estates were terminated without Indian consent under the "forced patent" policy of Commissioners Sells and Burke.[15]

In 1941, the Supreme Court upheld the right of Indians to lands which they had occupied from time immemorial, even in the absence of formal treaties or acts of Congress.[16] In the years from 1942 to 1946, this principle was vigorously applied by Secretary Ickes, Commissioner Collier, Commissioner Brophy, and Acting Commissioner Zimmerman to protect the property rights of Alaskan natives.[17]

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[8] This fund was later expanded by additional authorizations to cover Oklahoma tribes and the Navajo and Hopi Indians.

[9] 48 STAT. 984 (1934), 25 U.S.C. §§ 461 *et seq.* (1946); see also 49 STAT. 1967 (1936), 25 U.S.C. §§ 501 *et seq.* (1946).

[10] 49 STAT. 891 (1935), 25 U.S.C. §§ 305 *et seq.* (1946).

[11] 49 STAT. 1542 (1936), as amended, 50 STAT. 188 (1937), 25 U.S.C. § 412(a) (1946).

[12] Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456 (1948); Trujillo v. Garley, statutory three-judge federal court, New Mexico (1948) (unreported).

[13] United States v. Shoshone Tribe, 304 U.S. 111 (1938). The scope of this decision is discussed in Cohen, *Original Indian Title*, 32 MINN. L. REV. 28, 54-5 (1947).

[14] 52 STAT. 347 (1938), 25 U.S.C. §§ 396 *et seq.* (1946).

[15] 54 STAT. 298 (1940), as amended, 56 STAT. 87 (1942), 25 U.S.C. § 352(c) (1946). See note 99 *infra*.

[16] United States v. Santa Fe Pacific R.R., 314 U.S. 339 (1941). See discussion in Cohen, *supra* note 13, at 55-6.

In 1946, President Truman signed his name to the Indian Claims Commission Act, which gave Indians the right to collect just debts from the United States Treasury, a right that people of other races had been able to pursue in the Court of Claims for 83 years.[18]

In 1948, another long-standing discrimination against Indians was lifted when the United States Supreme Court held restrictive covenants against Indians, Negroes, and other so-called "non-Aryans" unenforceable.[19]

In 1949, following a year of Indian litigation, Arizona and New Mexico abandoned their policy of excluding Indians from old-age assistance, aid to the blind, and aid to dependent children, thus allowing Indians, for the first time, to enjoy in every state the same social security rights enjoyed by every other race.[20]

In 1950, twenty-four tribes launched an appeal to the White House against the Department of Agriculture's discriminatory exclusion of Indians from the scope of farm housing loans and grants. A year later this appeal brought a reversal of the ruling.[21]

There were still, in 1950, grievances and discriminations, but in almost every case the Indians felt that they could count on the support of the Indian Bureau and the Interior Department to do away with these survivals of ancient prejudice and hostility.

In appraising changes that have occurred in the Indian field since May, 1950, when Dillon S. Myer took office as Commissioner of Indian Affairs, three fields call for special attention: (1) restrictions upon freedom which apply only to Indians; (2) restrictions upon Indian control of Indian property; (3) organic changes in the power structure of the Bureau of Indian

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[17] See, *e.g.*, Public Land Order 128, May 22, 1943, issued by Secretary Ickes under authority of 49 Stat. 1250 (1936), 48 U.S.C. § 358(a) (1946), which established an Indian reservation on Kodiak Island. This order is discussed in Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).

[18] 60 Stat. 1049 (1946), 25 U.S.C. § 70(a) (1946). This Act allowed suits in the Court of Claims for wrongs consummated after August 13, 1946. For the adjudication of wrongs previously consummated, Congress set up a special Indian Claims Commission with jurisdiction to consider cases based upon violation of laws, treaties, or standards of "fair and honorable dealings." The original bar to the prosecution of suits by Indian tribes against the United States in the Courts of Claims was contained in § 9 of the Act of March 3, 1863, 12 Stat. 765, 767 (1863).

[19] Hurd v. Hodge, 334 U.S. 24 (1948); Shelley v. Kramer, 334 U.S. 1 (1948). The complaint in the former case indicated that the person against whom the restrictive covenant was invoked was a Mohawk Indian.

[20] Mapatis v. Ewing, filed in the United States District Court for the District of Columbia on September 21, 1948; complaint withdrawn when Arizona agreed to make social security payments to Indians.

[21] 16 Fed. Reg. 6713-15 (1951).

Affairs which underlie the changes in the boundaries of Indian rights and liberties.

Restrictions Upon Indian Freedom

According to the statutes, American Indians are entitled to exercise all the rights of citizenship.[22] But these rights are limited, in practice, by more than 2200 regulations now in force issued by the Commissioner of Indian Affairs. Many regulations, perhaps most, cite as their chief or sole authority Section 1 of the Act of July 9, 1832,[23] which establishes the office of Commissioner of Indian Affairs and vests in that office "the management of all Indian Affairs." Similar housekeeping statutes vest responsibility for "matters respecting foreign affairs" in the State Department,[24] and the duty to "develop . . . the transportation facilities of the United States" in the Department of Commerce.[25] These statutes have not been construed to give the Secretary of Commerce any power to improve the services rendered by our railroads or to give the Secretary of State any power over foreign nations. But Indians for some decades have had neither armies nor lawyers to oppose increasingly broad interpretations of the power of the Commissioner of Indian Affairs, and so little by little "the management of all Indian Affairs [of the Federal Government]" has come to be read as "the management of all the affairs of Indians." This trend towards enlarged bureau power was accelerated in the second half of the nineteenth century by the influx of former army officers into the personnel of the Indian Bureau. Administrators accustomed to exercising the powers of a military government were impatient of legal restraints as they undertook to govern all aspects of the lives of their subject peoples.

While there are some cases indicating that the Bureau's broad construction of its organic act would not be sustained if legally challenged,[26] administrations which sought to restrict Indian freedom have generally made sure that Indian tribes were not permitted to employ attorneys who might be inclined to challenge such assaults; those administrations which allowed Indians full freedom to hire lawyers did not make any assaults on Indian freedom that such lawyers could challenge.

The process of piecemeal enlargement of Federal Government attempts to control the conduct of Indians evoked the wonder expressed by a puzzled Indian Commissioner in his *Annual Report for 1892*:

> "Appointed at first in the capacity of a commercial agent or consul of the United States in the country of an alien people, the Indian

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[22] 43 Stat. 253 (1924), 8 U.S.C. § 601 (1946). See Annotation, 8 U.S.C.A. § 601 (1946).

[23] Rev. Stat. § 463 (1875), 25 U.S.C. § 2 (1946).

[24] Rev. Stat. § 202 (1875), 5 U.S.C. § 156 (1946).

[25] 32 Stat. 826 (1903), 5 U.S.C. § 596 (1946).

[26] See United States v. George, 228 U.S. 14 (1913); Jones v. Meehan, 175 U.S. 1 (1899); Leecy v. United States, 190 Fed. 289 (8th Cir. 1911), *app. dismissed*, 232 U.S. 731 (1914); and other cases cited in Cohen, Handbook 101-103.

> agent . . . has developed into an officer with power to direct the affairs of the Indians and to transact their business in all details and in all relations. This is a very curious chapter in our history. There is a striking contrast between 'ministers plenipotentiary,' appointed by the United States to treat with powerful Indian nations, and an army officer, with troops at his command, installed over a tribe of Indians to maintain among them an absolute military despotism. Yet our policy of dealing with them has swung from one of these extremes to the other in a strangely vacillating way."[27]

The following incidents indicate the most recent of these vacillations.

Freedom of Elections

In a democracy any interference with the right to vote is, of course, subversive of all other rights, and the general trend throughout the nation has been to diminish such interference.[28] Quite to the contrary, however, is the recent record in the Indian country. During the period 1950-1952 interference with the right to vote increased, chiefly along two lines: the use of federal funds to influence local elections, and direct interference with local election arrangements.

Use of federal funds. A notable instance of the use of federal funds to influence local Indian elections occurred on the Blackfeet Reservation during the June, 1950, tribal election. Thirty-six pages of mimeographed materials attacking certain candidates for local tribal office, charging them with various "criminal" and "illegal" acts (none of which were ever prosecuted and most of which were later shown never to have occurred) were prepared by Government employees at Government expense on Government paper and Government mimeograph machines. Hundreds of copies of this campaign literature were circulated by Government employees on the reservation during the two weeks before the election. The Association on American Indian Affairs wired Secretary Oscar L. Chapman on June 17, 1950, to inquire whether the circulation of such materials was known and approved by the Secretary of the Interior. This question was answered in the affirmative.[29]

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[27] Rep. Comm'r of Indian Affairs, 1892, p. 24 (1892).

[28] Smith v. Allwright, 321 U.S. 649 (1944); Lane v. Wilson, 307 U.S. 268 (1939); Nixon v. Herndon, 273 U.S. 536 (1927).

[29] Some months later Senator Chavez commented on this situation in the following terms:

> "But I do not think it is the business of the Indian Bureau to participate in matters of that nature. That is up to the individuals in the individual communities. I do not blame the Indians for resenting that kind of activity.
>
> "The Indian Bureau has enough to do without mixing up in local politics or spending the money of the Indian Bureau for that particular purpose.
>
> "They get little enough money—so they say, the Bureau itself—without using the money over there to control an election either

Such use of federal funds to influence local Indian elections quickly became accepted Departmental practice after June, 1950. In the Blackfeet referendum election of May, 1952, and the Choctaw referendum election of July, 1952, letters from Interior officials on the merits of referendum issues (as seen by the Indian Bureau) were distributed at Government expense with a view to influencing voters.

The Indian Bureau defends its use of federal funds to "enlighten" Indian voters on the ground that it has a trustee's obligation to see that Indians have a proper understanding of the issues on which they vote.[30] But the assumption of superior enlightenment concerning election issues on the part of Government officials runs counter to our American concept of popular government.

Direct interference. Similarly, direct interference with local elections for local offices has increased in frequency during the past three years. When the Blackfeet Tribe held a referendum election on May 9, 1952, on a proposed amendment to the tribal constitution, the Interior Department ran a rival election, managed by Indian Bureau employees; called out its special Bureau police force; closed down one or more tribal polling places; seized tribal funds, without tribal consent, to pay some of the expenses of the Bureau election (notwithstanding Secretary Chapman's assurance that no such action was contemplated); and, in order to validate its own election results, tried to strike more than 1,000 Blackfeet names from the list of eligible voters. This last move was eventually held by the Solicitor of the Interior Department to be illegal, and so the Bureau's election results were declared invalid. But the Bureau continues to insist that it has the right to run future tribal elections even where, as in the Blackfeet case, the tribal constitution provides that all local elections are to be supervised by the Indians themselves.[31]

At San Ildefonso Pueblo, in New Mexico, the Indian Bureau seized control of valuable lands and proceeded to dispose of the resources of the Pueblo without statutory authority, on the pretext that the Pueblo had failed to elect

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> amongst the Blackfeet or the Lagunas or Apaches, or the 17 pueblos of my State."

Hearings before Senate Appropriations Committee on H.R. 3790, 82d Cong., 1st Sess. 2200 (1951).

[30] Evidence of Bureau activity in "explaining" issues to the Indians may be found in circulars such as that signed and distributed by Blackfeet Superintendent Guy Robertson, under date of April 30, 1952 .

[31] Article IV, § 3 of the Blackfeet Tribal Constitution, adopted pursuant to the Indian Reorganization Act and approved December 13, 1935, provides: "All elections shall be held in accordance with the rules and regulations laid down by the tribal council, or an election board appointed by the tribal council." The Indian Bureau, disregarding its own practice of at least 17 years, claimed that "all elections" did not include referendum elections and asserted an "implied power" in itself to run tribal elections notwithstanding the language of tribal constitutions. Letter of Blackfeet Superintendent Guy Robertson to Area Director Paul L. Fickinger, dated January 24, 1952.

a Governor. In fact, the elected Governor of the Pueblo is recognized by all the other Pueblos, by the public, and by all of the members of the Pueblo except for a few beneficiaries of the Bureau's illegal acts.

The Right to Counsel

For Indians, as for other underprivileged groups, denial of the right to independent counsel means undermining of all the rights which require independent counsel for enforcement. When Commissioner Myer promulgated a set of proposed regulations to control both the selection of attorneys by Indians and the activities of attorneys so selected, the protests from Indians and non-Indians alike were so vigorous that Secretary Oscar L. Chapman called a public hearing on the proposal.[32] At this hearing, 44 witnesses appeared, including 24 representatives of more than forty Indian tribes; a special committee of the American Bar Association, along with 17 other non-Indian representatives, was also heard. Each of the witnesses opposed the proposed regulations as an unwarranted infringement on the right of Indians to representation by counsel of their own choosing.[33] The final report of the special committee of the American Bar Association declared: ". . . [T]he Committee has been unable to find evidence of any necessity to turn the clock backward so as to subject the Indian tribes to the minute and detailed controls which are prescribed in the proposed regulations."[34]

On January 24, 1952, Secretary Chapman rejected Commissioner Myer's proposed regulations. Despite this rejection, Commissioner Myer continued to deny thousands of Indians the right to employ attorneys of their own choice, on the theory that the regulations rejected by his superior, Secretary Chapman, were merely declaratory of existing practice and that he was merely carrying out the prior existing practice.[35] The fact remains, however, that during more than a decade before Mr. Myer took office no Indian tribe had ever been denied the right to retain as its attorney any lawyer in good standing at the bar. Since Mr. Myer took office more than forty Indian tribes have complained of Bureau interference in the exercise of this right. The Secretary on January 24, 1952, announced appointment of a committee to look into this problem. At last reports, the committee had never met.

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[32] Commissioner Myer found authority for his proposed regulations in 17 Stat. 136 (1872), 25 U.S.C. § 81 (1946), which placed certain restrictions upon the employment of attorneys in matters relating to the lands or claims of "Indians not citizens of the United States." Apparently, no consideration was given to the limitations upon that law contained in 43 Stat. 253 (1924), 8 U.S.C. § 601 (1946), or 48 Stat. 984, 25 U.S.C. §§ 461, 467 (1946).

[33] Among the organizations which condemned Commissioner Myer's proposed regulation were the Association on American Indian Affairs, Inc., Indian Rights Association, American Civil Liberties Union, National Association for the Advancement of Colored People, American Jewish Congress, Congress of Industrial Organizations, United Automobile Workers, and the Women's International League for Peace and Freedom. For typical newspaper criticisms of the proposed regulation see Editorial, *A Backward Step*, N.Y. Times, Oct. 15, 1951; Editorial, *Let Indians Choose their Own Counsel*, Washington Star, Jan. 6, 1952; Editorial, *Indian Counsel*, Washington Post, Aug. 29, 1952.

[34] Hearings on Proposed Regulations to Govern Indian Tribal Attorney Contracts, Transcript 1995 (1952).

[35] The Commissioner has adopted this position despite the fact that some of the grounds advanced to disapprove contracts previously had been held invalid insofar as

Freedom of Speech

The right to speak one's mind freely is so widely taken for granted in American life that it is inconceivable to most of us that anybody could have his bank accounts impounded as a penalty for criticizing the operations of a government bureau. Yet when the Oglala Sioux Tribe on September 28, 1950, petitioned Congress to cut wasteful expenditures of the Indian Bureau in its so-called "extension service" in South Dakota, the Indians were advised that $140,000 of credit funds allocated to the tribe several months earlier would be "frozen" until the tribe withdrew its criticisms.[36] Of course, there was no legal authority for any such action, any more than there would be for the freezing of the bank account of a non-Indian. But the Indian funds were in the possession of federal officials, and possession is at least nine points of the law. Even a non-Indian confronted by his banker with a "freeze order" from the Federal Reserve Board based upon a report by the Post Office Department and the Federal Bureau of Investigation that the depositor was engaged in subversive activities might have a hard time fighting his case through the courts with the world's largest law office on the other side of the case. Indians who are unable to employ counsel of their own choosing face even tougher odds in such a situation.

Freedom from Legal Discrimination

For a long time Indians have been asking for the repeal of various ancient statutes, mostly dating from the era of Indian wars, which make it illegal for Indians to buy liquor or ammunition or to sell various classes of livestock, agricultural implements, or cooking utensils.[37] When the Indians of Arizona and Montana testified in support of bills repealing these ancient discriminations, sponsored by Representative Patten of Arizona and Senators Ecton

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"applied retroactively so as to strike down contracts negotiated and entered into in good faith by Indian tribes and attorneys under existing policies." Memorandum from Special Departmental Appeals Committee to Secretary Chapman, Feb. 28, 1951.

[36] Details of these threats are given in the statements of Council Secretary Eaglebull and Commissioner Myer on Feb. 8 and Mar. 9, 1951. *Hearings before House Appropriations Committee on Interior Department Appropriations for 1952*, 82d Cong., 1st Sess. 1243, 1263 (1951).

[37] Rev. Stat. §§ 467, 2136 (1875), 25 U.S.C. § 266 (1946); Rev. Stat. § 2138 (1875), as amended, 18 U.S.C. § 1157 (1946); Rev. Stat. § 2135 (1875), 25 U.S.C. § 265 (1946); Rev. Stat. § 2139 (1875), as amended, 18 U.S.C. §§ 1154, 1156 (1946); 23 Stat. 94 (1884), 25 U.S.C. § 195 (1946).

and Murray and Representative D'Ewart of Montana,[38] the Indian Bureau testified in opposition to these measures.

The arguments presented by the Indian Bureau on such proposed bills vary from bill to bill, but the upshot of the argument is always the same. Every anti-discrimination bill so far introduced on behalf of Indians has been opposed by the Bureau. Sometimes the argument is that the discriminatory laws to which the Indians object—*e.g.*, the law which requires Indians to secure the approval of Government officials before selling their own cattle, even *after* they have paid off any liens or chattel mortgages—are really necessary for the Indians' protection. Sometimes the argument is that while the objective of the bill is sound, it should be pursued in some other way which in fact is totally impractical. This technique is applied particularly to defeat the legislative proposals of the Indians of Montana and Arizona, who have well-organized state-wide intertribal councils and are therefore able to reach general agreements on matters of common concern. When these Indians succeed in getting their Democratic and Republican Senators and Representatives to introduce legislation to repeal old laws which make it illegal for Indians to buy ammunition or sell clothing, the Indian Bureau opposes the legislation on the ground that any such measure should not be limited to Montana or Arizona—knowing full well that it would take many months, or perhaps years, to secure agreement on such bills among all the tribes in other states, and that it would be practically impossible to secure passage of this type of nation-wide legislation so long as there are tribes or Congressmen who have not yet had time or inclination to study the subject of legal discrimination.

The Indian Bureau's activities in opposition to the outright repeal of the discriminatory laws forbidding the sale to Indians of non-poisonous alcohol (even in the form of vanilla extract or tonic) are particularly unwholesome. In this situation, the Bureau, realizing how strongly Indians (including non-drinkers) resent the discrimination, insists upon using that resentment as a motive power to achieve acceptance of a wholly unrelated program, the abolition of tribal self-government. In furtherance of this policy, representatives of the Commissioner have travelled throughout the country offering Indians freedom from liquor restrictions if they will only give up their local courts and tribal police and accept state criminal jurisdiction. All the tribes of Montana have disapproved the Indian Bureau's "tie-in" sale of liquor; they insist that the repeal of discriminatory liquor laws in Montana "should not be made conditional upon state taxation, the elimination of tribal law and order codes, or any other surrender of Indian rights."[39]

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[38] S. 2620, 82d Cong., 2d Sess. (1952), introduced by Senators Ecton and Murray on Feb. 7, 1952; H.R. 6238, 82d Cong., 2d Sess. (1952), introduced by Representative D'Ewart on Jan. 28, 1952; and H.R. 6703, 82d Cong., 2d Sess. (1952), introduced by Representative Patten on Feb. 19, 1952.

[39] Resolution No. 6, November 27, 1951, Proceedings of Meetings of the Montana Inter-Tribal Policy Board, Helena, Montana, November 26-7, 1951, p. 9. It should be

Access to Hospitals

Pursuant to a long series of treaties and agreements, the Federal Government has built a number of hospitals for various Indian tribes. Indians have contributed lands, funds, and labor to the construction of these hospitals. On May 7, 1951, Commissioner Myer testified in favor of legislation to vest in the Secretary of the Interior (in reality, the Commissioner of Indian Affairs) the power to give away such hospitals to local political bodies or private parties without the consent of the Indians concerned. Representatives of the Association on American Indian Affairs and various Indian tribes, opposing Commissioner Myer's proposal, urged that Indian consent be made a prerequisite of such a transfer.[40] Congress rejected Commissioner Myer's request and adopted the amendment urged by the Indians and their friends, which is now embodied in Public Law No. 291, approved April 3, 1952. Commissioner Myer thereupon drafted a series of bills which would eliminate the requirement of Indian consent.[41]

Commissioner Myer's opposition to the rebuilding of the Papago Hospital —the only hospital on a 2,855,000 acre reservation, which burned down in 1947—and his closing down of small hospitals and clinics on various other reservations probably reflect the Commissioner's belief that Indians should not be encouraged to remain on reservations and that better reservation health facilities would constitute such encouragement. For example, in explaining a plan to remove various reservation officials from a South Dakota reservation, and locate them in another part of the state, notwithstanding the protests of the Indians, Commissioner Myer wrote:

> "The main overall reason we favor this is that we think the time is drawing near when Indian agencies, as such, located out on the reservations, should become unnecessary and should cease to exist. The Indians of South Dakota, I am sure you will agree, are at a point where they should be mingling more and more with the non-Indian population instead of living as a tight, close-knit group within the mental and physical confines of the reservation."[42]

In accepting the cliché that portrays an Indian's relation to his reservation as one of mental and physical confinement, Commissioner Myer forgets that

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noted in this regard that in 1946 the Indian Bureau sponsored a bill (S. 2159) to abolish discriminatory liquor laws without affecting tribal self-government. Rep. Sec'y of the Interior, 1946, p. 381 (1947).

[40] This testimony was presented before hearings of the House Subcommittee on Indian Affairs concerning H.R. 1043, on May 7, 1951. Commissioner Myer's testimony appears in the record of the hearing, which has never been printed.

[41] H.R. 7490, H.R. 7491, S. 3005, introduced April 10, 1952, in 82d Cong., 2d Sess., provide in § 7 for disposition of hospitals and other federal Indian installations in California without Indian consent. S. 3004, introduced on the same day, contains a similar provision for Oregon. It is reported that similar bills have been drafted for other states with Indian reservations.

[42] Letter of Commissioner Myer, dated October 19, 1951.

at least since 1879 Indians have been free to leave their reservations when they pleased. The fact is that Indians still largely reject the way of life represented by Gypsies and semi-nomadic Government officials. They still feel deeply attached to the lands their grandfathers reserved for themselves and their children's children. And most Indians, like most of their neighbors, would like to see schools, hospitals, and other public services close to their homes.

Freedom of Religion

Where native religious customs interfere with administrative convenience, Commissioner Myer has taken the position that Indian Bureau officials regularly maintained in the 1880's and 1890's: native custom must give way. For example, at one of the Rio Grande Pueblos, where ancient custom requires that no white person remain within the Pueblo at certain ceremonials, the Indian Bureau now insists that its employees will remain on the Pueblo grounds notwithstanding the objection of the Indian landowners to their presence.[43] The outcome of this controversy is still in doubt.

Freedom from Arrests, Searches, and Seizures Without Warrant

A bill to authorize employees of the Indian Bureau to carry arms and to make arrests, searches, and seizures, without warrant, for violation of Bureau regulations, on or off Indian reservations,[44] provoked a storm of protests from Indian tribes, civic organizations, and editorial writers throughout the country.[45] Opponents of the measure pointed out that Indians are now subjected to more than 2200 regulations applicable to them just because they are Indians, in addition to all regulations applicable to them as taxpayers, citizens, etc., and that not even the F.B.I. or the United States marshals have general power to make arrests for violations of administrative regulations.[46]

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[43] Letter of Commissioner Myer, dated October 17, 1951, and letter of the Albuquerque Area Director, dated March 6, 1952.

[44] H.R. 6035, 82d Cong., 2d Sess. (1952).

[45] Typical editorial comments are the following:

"Chronic hardship, lack of schooling and the unrelieved ravages of disease naturally provoke discontent and criticism among the victims. The bill to authorize the Indian Bureau to make arrests without warrant for violation of Indian Bureau regulations, etc., might fill the jails with complainants, but can hardly remedy conditions and policies which provoke and justify the complaints." New Orleans Times-Picayune, April 18, 1952.

"This measure appears to be a bald-faced attempt by the Indian Bureau to seize dictatorial powers. The right to be secure from arrest without warrant is one that has deep roots in American civil rights. To deprive the first Americans of this privilege is irony indeed." Gallup, N.M., Independent, April 16, 1952.

"It is amazing that an agency of our Government, for any reason, would put forth such proposals as these. Such a grant to bureaucrats of vast authority over Indians or anyone else in this country hasn't a shadow of justification. It should be rejected." Philadelphia Inquirer, April 17, 1952.

[46] The Association on American Indian Affairs observed that "no one would dream of saying that women or veterans should be subject to arrest without warrant or searches

Commissioner Myer, on the other hand, gave the proposal his full support, and made several speeches and distributed thousands of circular letters charging that critics of the measure were either dishonest or dupes of dishonest agitators.[47] After extensive hearings, the House Judiciary Committee killed the Commissioner's bill.

Freedom in Personal Life

The extent to which the Bureau of Indian Affairs now seems prepared to supervise the intimate details of an Indian's personal life is indicated by an incident reported to the Senate Appropriations Committee on May 7, 1952:[48]

> "Last week a tribal policeman on the Blackfeet Reservation reported that the local superintendent had called him in to see that the Indian men and women at Heart Butte stopped playing the stick games (a sort of aboriginal canasta) not later than six o'clock in the evening. Now of course the Blackfeet Agent and the tribal policeman have no more right to tell adult Indians when to stop playing games and when to go to bed than they have to tell me when I should stop playing poker or chess. Conceding that the Blackfeet Superintendent's intentions are highly moral, is there any reason in the world why the Federal taxpayers should pay for that kind of nonsense? Back in 1923, the Indian Bureau had a lot of regulations like that, providing that Indian dances could only be held once a month 'in the daylight hours of one day in the midweek' and not in March, April, June, July or August, and 'That none take part in the dances or be present who are under 50 years of age.'[49] Many of us thought that we had outgrown this sort of paternalism when Indians became full-fledged citizens in 1924, but if the Indian Bureau is allowed to proceed unchecked there are no limits to what they will spend Federal funds for."

Telling Indians when to go to bed and when to get up is not just a whimsical bit of paternalism. It has deep roots in a long tradition under which Indians for many decades were subjected to arrest and even death[50] if they did not behave as white officials wanted them to behave.

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or seizures by the Veterans Bureau or the Women's Bureau for violating the regulations of these Bureaus." New Republic, June 23, 1952, p. 8.

[47] In an undated memorandum widely circulated throughout the country in March, 1952, and thereafter, Commissioner Myer described criticism of the bill as "false and malicious," and accused the writers of the criticisms of intending "to spread terror among the Indians."

[48] *Hearings before Senate Appropriations Committee on Interior Department Appropriations for 1953*, 82d Cong., 2d Sess. 840 (1952).

[49] COHEN, HANDBOOK 175-6.

[50] A Bureau employee who hanged one of his Indian charges made the following comment in his annual report:

"Indians sometimes have to be dealt with severely and promptly. I made no mention of the execution in my report of Indians, as I did not know whether others could see the

Thus when the Bureau issues an official report telling the Rio Grande Pueblos that their custom of annual elections is causing "much trouble" in the handling of farm machinery;[51] that their communal use of grazing lands is lowering their grazing income;[52] that their individual partitioning of farming lands is lowering their agricultural income;[53] and that their religious customs are causing them to put "too much labor" on their corn fields,[54] these official denunciations have a disastrous effect upon Pueblo life quite similar to the probable effect on a non-Indian of a warning cast in similar terms and bearing the imprint of the F.B.I.

From 1930 to 1950 it looked as though we had definitely put an end to such unauthorized authoritarianism on Indian reservations. It now appears that this view was illusory.

Freedom of Opportunity

Outside of Indian reservations, every local community in the United States tries to give its own young people a fair chance to serve the community in which they have grown up. To this end, most American communities pick their own teachers, village clerks, policemen, and other public servants, giving a preference to whatever local talent is available. In an Indian community, however, such jobs (unless the pay is too low to attract outsiders) are generally filled, under Washington directives, by persons who come from far distances, who have no familiarity with local conditions, customs, ways, and people, and who often cannot even understand the community's language.

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necessity for it that I did, and thought it as well to say nothing about it to the authorities at Washington." Rep. Comm'r of Indian Affairs, 1866, p. 101 (1866).

Killing of Indians by reservation authorities has been justified on the ground that Indians were resisting lawful authority. See Rep. Comm'r of Indian Affairs, 1878, p. 36 (1878).

The use of force in seizing Indians to cut off their braids is defended in Rep. Comm'r of Indian Affairs, 1902, p. 14 (1902).

The Commissioner's Report for 1899 gives the following account of the treatment of the Kickapoos:

"In May, 1895, the surplus Kickapoo lands were thrown open to white settlement. Neither band of the Kickapoos was in any way prepared to meet this new condition. The white settlers soon stole or robbed them of most of their property. They became the ready prey of dishonest deputy United States marshals, who upon false charges of selling whiskey arrested and hauled them to the Federal jail by the wagonload. Later, an effort was made by the agent in charge to put their children in school. This the parents resisted, and for such resistance were maimed and beaten by the brutal deputy marshals, who then arrested them for resisting United States officers 'in the discharge of their duty.' . . ." Rep. Comm'r of Indian Affairs, 1899, p. 292 (1899).

[51] Pueblo Extension Program for 1951, p. 16 (mimeo. 1951), transmitted by Superintendent Hagberg to the Pueblo Governors, March 15, 1951.

[52] *Id.* at 10.

[53] *Id.* at 17.

[54] *Id.* at 10.

This means that natural avenues of public employment in community service are practically closed to members of the community. Congress attempted to end this condition by enacting legislation in 1934 which declared:

> "The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, *without regard to civil-service laws,* to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment of vacancies in any such position."[55]

This congressional direction has been increasingly ignored in recent years. The required standards for the appointment of Indians to all Indian Service positions "without regard to civil-service laws" have been issued only for a handful of minor positions. For more than 90% of the jobs in the Indian Bureau no special list of qualifications for Indian candidates—required by law—has ever been promulgated. An outstanding reservation superintendent, himself an Indian, was practically hounded to his death with charges and investigations based on the theme that he had given his first loyalty to the Indians he served rather than to his Washington superiors.[56] The Indian Bureau continues to proclaim that Indians are accorded preference in employment. Investigation reveals that this means merely that where a number of job applicants receive the same grade on a civil service examination, the Indian applicant will be "preferred" to the non-Indian. This ignores the law which exempts Indians from civil service requirements. It also ignores the fact that Indians, born into a cultural environment that provides less preparation than does non-Indian society for academic degrees and similar civil service requirements, are inevitably handicapped in civil service competition. Exclusion from the possibilities of on-the-job training, which Bureau employment would provide, serves merely to perpetuate this handicap and to lend weight to the Bureau attitude that Indians are "not yet ready" to run their own public services.

Freedom from Unfair Competition in the Use of Indian Resources

Because of discriminatory restrictions, the vast majority of Indian landowners are barred from using their own land. The reasons given for this conclusion vary from acre to acre: On one acre the Indian Bureau acts as a guardian of unknown heirs, as a perpetual administrator of an indivisible inheritance, and as a rent-collector for holders of claims against Indians who have long since passed away; on a second acre, where an Indian wants to graze his ponies, the Indian Bureau appears as a grazing master, securing for outside livestock operators an ever-increasing control of Indian lands by forbidding the use of the range to all Indians who are too poor to construct barbed wire fences (at least 98% of the Indian population); on a third acre, the Indian Bureau turns up with a mortgage which enables it to direct almost every movement of the Indian "owner."

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[55] 48 Stat. 984 (1934), 25 U.S.C. § 472 (1946) (emphasis supplied). Beginning in 1834, Congress adopted a series of statutes giving Indians preference in all Bureau positions. See, *e.g.*, 4 Stat. 735 (1834), 25 U.S.C. § 45 (1946), which provides:

> "And in all cases of the appointment of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties."

These statutes, however, remained dead letters because civil service requirements barred practically all Indians from all but a few lowly positions.

[56] See National Congress of American Indians News Bulletin, May-June, 1952, p. 2

Faced by hundreds of special restrictions which do not apply to their white neighbors, Indians have survived on land where white men would starve to death and under regulations which could drive men of any race to insanity. The secret of this survival may perhaps be found in the Indian's perennial and drought-resistant spirit of generosity and cooperation. Commissioners have tried in vain, as one Commissioner put it, to teach the Indian to say "I" instead of "we."[57] Their failure has been the Indian's success. And this success at cooperation is now the target of the Indian Bureau's most intense attack.

The Indian has always felt that land which he did not need or could not use should be shared with other members of his family or community. This principle of Indian preference in the leasing or sale of Indian lands is written into hundreds of tribal constitutions, ordinances, and agreements, all approved by the Indian Bureau. On February 29, 1952, Commissioner Myer issued a set of "directives" which ignore all these agreements and, as currently interpreted, effectually stop gifts of land from mother to child, sales at less than market price between Indian friends and neighbors, and donations to tribes. Indians see that the upshot of all these directives is to push Indian land out of Indian hands and into absentee ownership and corporation control. From 1607 to 1933, Indian land-holdings decreased steadily from year to year. From 1933 to 1949, Indian land-holdings increased. Since then, a decrease of Indian land-holdings has again taken place.[58]

Even those lands that remain technically within individual Indian ownership are being rapidly turned over to non-Indian control, through Bureau repudiation of the Indian preference principle. Blackfeet Indians, for example, have been trying to get into the sheep business for many years. They are supposed to have a preference whenever Blackfeet lands are leased for sheep grazing. Only eight small Indian operators have managed to survive all the Indian Bureau's discriminatory regulations and to secure preference leases, for which they are charged $5.22 per sheep on a three-year permit. The eleven big commercial sheep operators from Washington and Oregon who are running sheep on the Blackfeet Reservation received three-year permits from the Indian Bureau[59] at the same time at $2.65 per sheep. They paid the Indian landowners $105,860.87 less than would have been paid to them under the terms of the so-called "Indian preference" permits.

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[57] REP. COMM'R OF INDIAN AFFAIRS, 1888, p. LXXXIX (1888).

[58] In the period from 1607 to 1887, the date of the General Allotment Act, 24 STAT. 388 (1887), 25 U.S.C. § 331 (1946), Indian land-holdings were reduced from ownership of the entire continental United States to ownership of approximately 138 million acres. By 1933, Indian land-holdings had been further reduced to a total of only 48 million acres, of which approximately 20 million acres were desert or semi-desert lands. *Hearings before House Subcommittee on Indian Affairs on H.R. 7902,* 73d Cong., 2d Sess. 15-18 (1934). Between 1933 and 1949, Indian land-holdings increased by almost 4 million acres. REP. SEC'Y OF THE INTERIOR, 1948, p. 380 (1949). Although official statistics have not yet been published, the Indian Bureau reports that Indian land-holdings have again decreased since 1949.

Indians, especially returned G.I.'s, seeking to build up their little flocks and herds through the assertion of "Indian preference" rights on Indian lands, have been especially hard hit by the Indian Bureau's ruling that an Indian who secures a lease on Indian land by meeting a white man's high bid cannot take in outside cattle in his ranching operations as a white man could. The Blackfeet Indians, after almost superhuman efforts involving three appeals, two trips to Washington, and the defiance of all sorts of coercive pressure, finally succeeded in having the Indian Bureau's discriminatory rules against Indian cattlemen declared invalid by Assistant Secretary Doty.[60] Nevertheless, Indians report that the Indian Bureau continues to enforce the invalid discriminations.

INDIAN PROPERTY

Tribal Land

Within the past two years, the former habit of Indian Bureau officials of disposing of Indian tribal lands without the consent of the Indians—a practice which has already resulted in more than 80 million dollars in judgments against the United States by its own courts[61]—generally has been reestablished as approved Interior Department practice. In May, 1951, leases were issued by the Department, without Indian consent and over the protest of the Indians concerned, covering a valuable building materials deposit on the lands of the Pueblo of San Ildefonso. On October 18, 1950, leases of valuable Blackfeet tribal grazing lands were issued by the Bureau of Indian Affairs in spite of the fact that the Blackfeet Tribe had protested against the proposed leases and had even taken the unusual precaution of publishing its protest in the Montana press. The Secretary of the Blackfeet Council, who attended the sale to warn lessees of the tribe's objections, was ejected from the room by the reservation superintendent. Eventually, after a series of appeals, hearings, briefs, and arguments, Assistant Secretary Doty reversed the Indian Bureau and nullified the leases. The Indian Bureau, however, then issued a press release announcing that its decisions had been affirmed.[62]

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[59] On the technique by which the Bureau takes over the leasing of lands owned by individual Indians, see pages 365-7 *infra*.

[60] Letter from Hon. Dale E. Doty, Assistant Secretary of the Interior, to Felix S. Cohen, dated March 16, 1951.

[61] Among the more recent decisions granting compensation to Indian tribes for lands improperly taken by the United States are United States v. Alcea Band of Tillamooks, 329 U.S. 40 (1946), *on remand*, 115 Ct. Cl. 463 (1950), *rev'd in part*, 341 U.S. 48 (1951); Confederated Bands of Ute Indians v. United States, 100 Ct. Cl. 413 (1943), *judgment entered upon stipulation*, 117 Ct. Cl. 433 (1950); The Creek Nation v. United States, 2 Ind. Cl. Comm. 98 (1952).

When an Indian superintendent at the Pyramid Lake Reservation attempted to protect Indian lands against white trespassers whose claims had been rejected by the federal courts,[63] the superintendent was promptly ordered removed by Commissioner Myer, at the suggestion of the trespassers' legal adviser, who happened to be the senior Senator from Nevada, Mr. McCarran. President Truman interceded to stop the removal, but after a few weeks the superintendent, denied any support by the Interior Department, resigned and took a job protecting natives in other lands where trespassers do not have special friends in the United States Senate.[64]

In the eyes of many contemporary Indian Bureau administrators, Indian tribal property belongs to the Indian Bureau; therefore, individual Indians should be compelled to pay for such property when they use it. The Blackfeet, Gros Ventre, and Assiniboine Indians of Montana, for example, have long supported the distribution of tribal irrigation water free of charge to indigent members of these tribes, and Congress has expressly authorized such free distribution.[65] Nevertheless, the Billings Area Director forbade such water deliveries on March 16, 1951. After sharp protests from the tribal councils and a formal appeal to the Department, the Area Director and Commissioner Myer were overruled on July 26, 1951, by the Acting Secretary of the Interior.[66] In practice, however, the Bureau continued to ignore the overruling.[67]

Individual Allotments

Dividing tribal lands into individual allotments was originally justified by the Indian Bureau on the ground that individualized property would help the Indian learn to handle his own property, learn the white man's ways, and eventually develop what the Indian Bureau used to refer to as the "sacred egotism" of the white man.[68] But when the Indian began to display just these skills and attitudes, the Indian Bureau devised a system to roll back all power over Indian allotments into Bureau hands. This "recapture" device is generally called the "unit" or "power of attorney" system.

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[62] See Associated Press dispatch from Billings, Montana, dated March 13, 1951.

[63] Depaoli v. United States, 139 F.2d 225 (9th Cir. 1943), *cert. denied*, 321 U.S. 796 (1944); United States v. Garaventa Land & Livestock Co., 129 F.2d 416 (9th Cir. 1942).

[64] See N.Y. Times, Nov. 2, 1951, p. 17.

[65] 36 Stat. 270 (1910), as amended, 25 U.S.C. § 385 (1946).

[66] Letter of Acting Secretary of the Interior R. D. Searles to Secretary of Fort Belknap Community Council. A similar instruction was sent by Commissioner Myer to Area Director Fickinger in respect to the similar appeal of the Blackfeet tribe. Noted in letter from the Commissioner to Felix S. Cohen, dated Dec. 12, 1951.

[67] A second appeal was taken on December 17, 1951, by the Ft. Belknap Community Council from the failure of Area Director Fickinger to carry out the order of the Acting Secretary. Again the Department ordered reversal of the Area Office ruling—with doubtful effect.

Under this system, each Indian is persuaded or, if necessary, compelled to turn over to the reservation superintendent a "power of attorney" which gives the superintendent complete authority to dispose of Indian lands for grazing purposes. What began as a more or less voluntary arrangement is now being maintained by ruthless force. Within the past two years the Indian Bureau has sent notices to Indians telling them that they will not be allowed to collect any income from their lands unless they surrender power over these lands to the agency superintendent by signing a power of attorney. Similar notices are sent to livestock operators in the vicinity who might be inclined to contract with Indians for the grazing of the operators' stock, warning them that such contracts will not be tolerated.[69] The statutory authority of the Secretary of the Interior to approve or disapprove Indian leases,[70] an authority originally granted to protect both Indian-lessors and their lessees from fraud and to ensure proper recording,[71] is now being used to centralize the leasing of Indian lands in the Bureau itself. Thus a complete boycott is established against the individual Indian landowner. If an Indian resists these threats and attempts to use his own land for his own ponies or cattle, the Indian Bureau officials then seize his livestock or slap fines on him for alleged "trespass," even though he has not actually violated the trespass laws of the state. Eventually, in about 98 cases out of a hundred, the Indian gives up the unequal battle, signs a power of attorney, and loses all control over, or interest in, what is supposed to be his individual allotment. Once this stage has been reached, Indian Bureau officials have millions of acres of valuable grazing lands to dispose of virtually as they please.

Handing out valuable lands for free grazing by lambs owned by big out-of-state sheepowners was one of the Bureau practices against which the Blackfeet Indians particularly protested. Indian land has been disposed of collusively at bargain rates to Bureau employees and their friends. Indeed, despite an exposé by the *Portland Oregonian*[72] of a giant fraud in the disposal of Indian timber lands, under which a tract worth $400,000 was sold for two checks, one of $135,000 to the original Indian owner, and one of $25,000 to an agent for interested Bureau employees, the Bureau official responsible for approving the transaction was continued in office.

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[68] REP. COMM'R OF INDIAN AFFAIRS, 1885, p. 135 (1885).

[69] Copies of such a notice have been submitted by the Oglala Sioux Tribe to Under Secretary of the Interior Searles under date of June 27, 1952. Compare REP. COMM'R OF INDIAN AFFAIRS, 1948, p. 388 (1948): "Revised regulations were issued last year permitting an individual Indian landowner to lease his own land and that of his minor children and to collect the lease rentals directly from his client." To the same effect is an unpublished speech by Acting Commissioner Zimmerman before the Home Missions Council on Jan. 12, 1949.

[70] The relevant statutes are collected and discussed in COHEN, HANDBOOK 227-9.

[71] See White Bear v. Barth, 61 Mont. 322, 203 Pac. 517 (1921).

The Indian Bureau defends this operation of private lands by Bureau officials on the ground that Government operation of large units is more efficient than individual operation of small farms, and more conducive to conservation. (The same arguments are used in Russia and China.) In making this argument, the Indian Bureau not only disregards the constitutional rights of the Indians concerned, but also indulges in the expectation that its employees will always have only the interests of the Indian landowners at heart. Experience shows that this expectation is highly unrealistic.

Tribal Income

For many years the Interior Department backed the concept that Indian tribes should be allowed to spend their own earnings without let or hindrance from federal officials.[73] Under Commissioner Myer's administration every bill introduced in Congress for this purpose[74] has been opposed by the Interior Department, on the ground that Indians are "not yet ready" to spend their own money. In some instances, Bureau officials have gone even further. Thus the Blackfeet Tribal Council, which had a limited jurisdiction over some of its own earnings and had done its banking at the First National Bank of Browning, Montana, was peremptorily ordered on June 6, 1950, to deposit all funds in excess of $5,000 with the Agency Superintendent. When the Tribal Council stood its ground and refused to obey this legally unauthorized order, the Indian Bureau backed down.

Why Bureau employees want to keep a stranglehold on Indian income is not difficult to understand. So long as they retain this control they can insist that such Indian funds be used to pay any Bureau employee removed from the federal payroll.[75] They can prevent the use of such funds for carfare in investigating or protesting government frauds and irregularities. This restriction has been placed on the funds of the Fort Belknap Indians in Montana, the Pyramid Lake Indians in Nevada, the Jicarilla Apache Indians in New Mexico, and many other tribes which have been earning substantial incomes for themselves through the management of tribal cattle herds, tribal stores, or other commercial enterprises.

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[72] Portland Oregonian, Jan. 25, 1952; N.Y. Times, Feb. 2, 1952

[73] See notes 117-122 *infra*.

[74] H.R. 1936 (Rep. D'Ewart), H.R. 2124 (Rep. Mansfield), S. 745 (Sens. Murray and Ecton), H.R. 6672 (Rep. Patten), all in 82d Cong., 2d Sess. (1952).

[75] Among the tribes whose funds have been used in recent years to pay for clerks who were dropped from federal payrolls in response to congressional appropriation cuts but who then continued at their old work are the Rosebud Sioux, the Flathead, the Blackfeet, the Oglala Sioux, and the Fort Belknap Community.

Tribal Buildings

By all ordinary standards of law, equity, and morality, a building constructed on Indian lands as a "gratuity" to Indians, for which Indians have subsequently been charged (through offsets against tribal recoveries in claims cases), belongs to the Indians concerned. At least theirs is the basic equity in such a building. But when the Blackfeet Indians insisted on making use of such buildings, or at least collecting the rents which are paid by the employees who live in these buildings and which government officials now put into government accounts, they were threatened by zealous Bureau employees with arrest and even, in the case of one tribal employee, with death. Eventually the Bureau agreed that the Indians have a proper equity in such buildings,[76] but the Bureau is still collecting the rentals; and, notwithstanding Commissioner Myer's promises to the Blackfeet Tribe, no tribal building of any substantial value has yet been turned over to the Blackfeet (or, apparently, any other) tribe.

Tribal Cattle

During the drought years in the 1930's, the Government, as a measure of relief to distressed farmers, purchased drought cattle at an average price of about $12 a head. Most of these cattle were given away free to relief clients. Under Commissioner Myer's administration, Indian tribes which received such drought cattle have been charged up to $140 or more a head for what started out as a gift and was a gift to everybody who wasn't an Indian. The practice of making gifts to Indians and then charging the Indians for the gift was not invented by Commissioner Myer[77]—it runs back many decades in our Indian history—but charging Indians $140 or more for a gift that cost the giver only $12 is a new wrinkle on an old game.

The Blackfeet Indians wouldn't have minded being charged for the wobbly, drought-stricken cows they received as a gift. They had no objection to paying retroactive interest on these gifts. In effect, for many of these cattle, the Indian Bureau charged interest at the rate of 70% per annum. But repaying cattle loans, even at 70% interest, was worthwhile, the Blackfeet felt, since only in this way would they achieve final and complete ownership of their own cattle. What shocked the Blackfeet, however, was that in June, 1950, after they had paid back the Indian Bureau many times over for the last cow they had received, they were suddenly advised by the Indian Bureau that title to the cattle was still vested in the Bureau and that the Bureau would arrange for the disposition of the cattle as it thought best. Bitter protests at this breach of faith were completely futile. The Chairman of the House Interior Appropriations Subcommittee, Representative Michael Kirwan, declared that he "will not believe" that "this Government, your Government, and my Government" would do any such thing.[78] But when the Indian Bureau itself supplied facts and figures confirming the charge,[79] the House Committee quickly dropped the subject.

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[76] See The Blackfeet Nation v. United States, 81 Ct. Cl. 101 (1935), in which the construction expense of these buildings was charged as an offset against a tribal recovery.

[77] See note 76 *supra*. See also The Warm Springs Tribe of Indians of Oregon v. United States, 103 Ct. Cl. 741 (1945); The Indians of California v. United States, 98 Ct. Cl. 583 (1942), *judgment entered upon stipulation*, 102 Ct. Cl. 837 (1944); The Assiniboine Tribe of Indians v. United States, 77 Ct. Cl. 347 (1933).

Many other tribes, especially in the Montana-Dakota area, have had similar experiences with the Indian Bureau cattle repayment program, and have protested vigorously, but without result.[80]

Tribal Credit

In 1934, the Department of the Interior went before Congress with the unusual suggestion that, since it had mismanaged Indian credit funds to a point where about 50% of its loans were in default, it would be a good idea to turn over the management of Indian credit funds to Indian corporations.[81] The thought behind this suggestion was that Indians would be more scrupulous about paying back loans from their own neighbors—as the good record of credit unions shows—than they were about paying back loans to a faraway and impersonal "Washington." Congress picked up the challenge and adopted legislation authorizing the formation of Indian tribal corporations to handle credit funds.[82] The Indians organized over a hundred such corporations, which have repaid their borrowings with a net default rate of less than one-tenth of one percent.[83] Within the last few years, however, the Indian Bureau has been reaching out to take back control over these funds. This drive generally makes use of unproved charges of "politics" in the handling of tribal credit funds. Behind these charges is the fact that Indian Bureau employees frequently "suggest" to Indian corporations that they lend large sums to some Indian who is more highly regarded by the Bureau than by his fellow tribesmen. Such suggestions are often turned down by the Indian corporations. These refusals to extend credit, according to Indian Bureau gobbledegook, are always the result of "tribal politics."

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[78] *Hearings before House Committee on Appropriations on Interior Appropriations for 1952*, 82d Cong., 1st Sess. 1233 (1951).

[79] *Id.* at 1261.

[80] Resolution on cattle repayment, unanimously adopted on June 23, 1951, by delegates of all Montana tribes at Conference in State Capitol, called by Montana Governor John W. Bonner. CONFERENCE PROCEEDINGS 12, 13 (1951).

[81] See *Hearings before House Subcommittee on Indian Affairs on H.R. 7902*, 73d Cong., 2d Sess. (1934) *passim*. An unpublished report on transactions during fiscal year 1933 prepared by the Extension Division of the Indian Bureau showed that on June 30, 1933, 44% of the outstanding reimbursable indebtedness was delinquent.

[82] 48 STAT. 984 (1934), 25 U.S.C. §§ 470, 477 (1946).

[83] EXTENSION DIV. OF INDIAN BUREAU, THE ANNUAL CREDIT REPORT (1950), prepared by the Extension Division of the Indian Bureau for the fiscal year ending June 30, 1949, shows that not a single Indian corporation or tribe was delinquent in the repayment of reimbursable indebtedness, although almost 6 million dollars had been due to the Government in that year. *Id.* at 8. The record for all Indian borrowers, including credit associations, cooperatives, and individuals, shows a default rate of less than 1%.

Latest step in the expansion of Bureau controls over tribal credit operations is the proposal, published in the *Federal Register* on January 13, 1953,[83a] that interest rates charged tribes, which have hitherto been uniform, should hereafter be subject to the discretion of the Secretary of the Interior or the Commissioner of Indian Affairs. Originally, the tribes had been assured that, since they were taking over a federal responsibility in handling these funds, they would not be required to pay any interest on them.[83b] A "carrying charge" of 1%, however, was imposed at the outset of the program.[83c] One of Commissioner Myer's first official acts was to double that levy.[83d] Under the new proposal, interest rates on all funds advanced to Indian tribes might vary from 2% to 5%; at the same time, interest rates on federal loans to individual Indians would be raised from a uniform 4% to a range of 4% to 6%. These regulations would vest in the Bureau, at its discretion, power to reward Indian tribes and individuals sympathetic to its views with low interest rates, and to penalize "unfriendly" tribes or "unfriendly" individuals by classifying them as "poor credit risks" and charging them high interest rates. Publication in the *Federal Register* was the only notice given of the proposed regulations, and the Indians concerned were further granted only 30 days to protest this breach of good faith.

Some Indians, in order to free themselves from federal interference in their local operations, have offered to pay back to the Indian Bureau the last dollar they ever borrowed if the Bureau would then leave them alone and let them handle their own tribal funds without Washington interference. The first response of the Indian Bureau was that such a move, however desirable, would require an act of Congress. Why a new act of Congress was needed to compel the Bureau to follow the 1934 Act, nobody ever explained. But when the Blackfeet Indians called the Bureau's bluff, and persuaded Senators Murray and Ecton and Representative D'Ewart to introduce bills[84] to allow the Blackfeet to pay off their outstanding debts to the Federal Government and achieve freedom from Bureau control over tribal credit operations, the Indian Bureau opposed these bills,[85] just as it has opposed every other Indian-sponsored bill designed to curtail Bureau powers during the past two years.

[83a] 18 Fed. Reg. 256 (1953).

[83b] Statement of Commissioner John Collier, *Hearings before House Subcommittee on Indian Affairs on H.R. 7902*, 73d Cong., 2d Sess. 109 (1934).

[83c] 25 Code Fed. Regs. § 21.6 (1949).

[83d] 15 Fed. Reg. 8023 (1950); 25 Code Fed. Regs. § 21.6 (Supp. 1950).

[84] S. 2893 (Sen. Murray), S. 2908 (Sen. Ecton), H.R. 6952 (Rep. D'Ewart), all in 82d Cong., 2d Sess. (1952).

[85] These hearings have not been published, but transcripts are available from the House and Senate Committees on Interior and Insular Affairs.

Tribal Claims

The fact that every year so many potentially wealthy Indians starve to death or die from diseases brought on by malnutrition is difficult to understand unless one appreciates that Indian wealth consists largely of inedible claims against the United States Treasury. A special statute enacted in 1863 prohibited all Indians from suing to collect sums due from the United States, as other citizens are permitted to do.[86] From 1930 to 1946, the Indian Bureau and many unofficial organizations friendly to Indian rights sought to end this discrimination.[87] Finally in 1946, the Congress passed, and President Truman signed, the Indian Claims Commission Bill,[88] which ends, once and for all, this discrimination against Indian tribes and establishes an Indian Claims Commission to deal with the backlog of Indian Claims that have been barred, these many decades, from the Court of Claims.

Because the Indian Bureau backed this legislation all the way, and particularly insisted that it would come forward with the factual records on which these claims might be fairly judged,[89] the Bureau was looked to by Indians throughout the land as the champion of a new hope of justice and economic independence. During the past two years this hope, like many other earlier Indian hopes, has crashed into small pieces.

First, a number of Indian tribes found themselves excluded from court because Commissioner Myer would not approve the only lawyers they knew and trusted.[90] Second, Commissioner Myer played a large part in blocking enactment of a bill to give Indians additional time to employ lawyers and file their claims.[91] Third, since May, 1950, the Indian Bureau has steadfastly refused to give Indian tribes information in Interior Department files which they need in order to present their cases properly, offering the lame excuse that such Indian requests for information amount to asking the Bureau to do research work for Indian tribes, and alleging that it is illegal for Government employees to "aid or assist" (even by telling the truth) "in the prosecution or support of claims against the United States."[92] In the fourth place, the Indian Bureau has apparently been spying on the activities of tribal attorneys as they go through public files in the Interior Department Building and then advising opposing counsel concerning such activities in order that Indian claims may be more easily defeated. Of course, the Commissioner can always reply that disclosing information concerning the research activities of tribal attorneys helps to achieve truth, but he has made no move so far to acquaint Indian tribes, his alleged "wards," with the facts concerning similar research activities of their legal opponents in the Justice Department.[93] Finally, under Commissioner Myer, the Indian Bureau has adopted the extraordinary practice of promulgating official opinions on questions before the Indian Claims Commission.[94] Every such opinion rendered within the past two and a half years has been adverse to the Indians.

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[86] 12 Stat. 765, 767 (1863). See note 18 *supra*.

[87] A bill looking forward to the settlement of all Indian claims was introduced in Congress by Representative Leavitt of Montana as early as January 6, 1930. At least eighteen similar bills were introduced in the period between 1934 and 1945.

[88] 60 Stat. 1049 (1946), 25 U.S.C. §§ 70 *et seq.* (1946).

[89] Under Secretary Ickes, it was the custom of the Indian Bureau to go through its files and prepare "a lengthy history and discussion of the case," which was then made available to the Indians' attorneys as well as to the Department of Justice. See Statement of Harold L. Ickes quoted in Sen. Rep. No. 1002, 74th Cong., 1st Sess. 4 (1935). Assistant Attorney General Blair, representing the Department of Justice, explained that it was necessary for the Government to supply the Indians' attorneys with the documentary evidence because it "does not exist anywhere else." *Hearings before Committee on Expenditures in the Executive Departments on Indian Claims*, 74th Cong., 1st Sess. 25 (1935).

[90] See section in text titled "The Right to Counsel," pages 355-6 *supra*.

[91] During hearings before the House Subcommittee on Indian Affairs on H.R. 2896, H.R. 3203, and H.J. Res. 210 (all bills to extend the time for filing under the Indian Claims Commission Act) Associate Commissioner H. Rex Lee, on July 3, 1951, presented a variety of reasons indicating that the requested one-year extension was unnecessary and advocating a six-month extension limited to those tribes which secured contracts approved by the Commissioner of Indian Affairs within the last six months of the allowed period for filing claims. Such a limited bill would have served no useful pur-

Indian Personal Property

Until 1952 Indians who dug turquoise, gravel, or potatoes out of their own lands were never under any compulsion to seek the approval of any federal official before disposing of such property. Within the past few months, however, the Indian Bureau's legal staff has developed the theory that what was once a part of the Indian's restricted real estate remains forever a part of that estate. On this basis the Bureau is now bringing suit to recover gravel dug by Indians from their own lands and sold for atomic energy development purposes.

At only one point in the past two years has the Indian's control over his personal property been somewhat enlarged. After several years of Indian protest and Indian Bureau travail, Secretary Chapman on June 27, 1951,

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pose since the tribes with approved attorneys contracts were all able to file their claims within the allowed period; it was the tribes without approved contracts that were barred from redress.

[92] This decision was affirmed by Assistant Secretary Dale E. Doty on September 27, 1950.

[93] One of the reasons for refusing to give the Sac and Fox Indians information which they requested from Interior Department files was that giving such information would amount to "expressing opinions on legal questions which are committed to the Indians Claims Commission for determination." Decision of Assistant Secretary Dale E. Doty, September 27, 1950.

[94] Examples of recent cases in which the Government introduced opinions of the Indian Bureau in an effort to defeat the claims of the Indians are: The Delaware Tribe v. United States, Nos. 27A and 241, Ind. Cls. Comm., March 31, 1952; Cherokee Freedmen v. United States, 2 Ind. Cls. Comm. 231 (1952).

issued an order allowing adult Indians to spend their own income if the local superintendent thought them competent. The order leaves tribal or corporate income under Bureau control; it gives local Bureau agents power to spend an adult Indian's income for a variety of purposes without his consent; and it authorizes local agents to disregard court orders on guardianship and make themselves the guardians of the funds belonging to Indian children and incompetent adults. This very limited liberalization of individual Indian money regulations is the longest step taken in two years in the direction of curtailing Bureau powers.

Indian Tax Exemptions

Indian tax exemptions are not personal to the Indian but are characteristic of certain forms of property, resting generally on a treaty or agreement promising that a piece of land would remain in Indian ownership forever. Such promises were generally part of the bargains by which most of the land of the United States was sold to the Government. Indians are perfectly willing to give up their tax exemptions if the Federal Government will only give them back the consideration. At any rate, the courts have held that such promises of tax exemption create vested rights which even Congress is constitutionally bound to respect.[95] Within the past three years, however, the Indian Bureau has sponsored a series of bills which unilaterally would end such tax exemptions.[96] Interested Indians and their friends have vigorously protested against such bills as a violation of constitutional rights and of national honor.

Indian Trust Estates

When the Federal Government began, in 1798,[97] to make "rugged individualists" out of Indians by dividing tribal lands among the members of the tribe, it initiated he practice of conferring upon itself a trustee's legal title to each tract so allotted. To this day, most individual Indian lands are held under trusts, generally extending for a 25-year trust period or longer, which are renewed from time to time unless the Indian himself requests termination of the trust. In the white man's world a trust estate is likely to be an estate of special value. But the Indian Bureau's current conception of a trust estate is that it is an estate belonging to an Indian in which the Indian has no rights that the Indian Bureau is bound to respect. In line with this notion, the Interior Department on December 29, 1951, inaugurated the policy of extending trust patents for only one year at a time, instead of 25 years, as was formerly the custom with respect to all lands not covered by the Indian Reorganization Act of June 18, 1934, which extended indefinitely the trust period for all Indians covered by that Act. This means that every Indian holding such a one-year trust estate must live in uncertainty from year to year as to whether the trust will be renewed. A series of bills have recently been drafted under Commissioner Myer's direction and some of them have already been introduced,[98] which would re-establish the infamous "forced patent" system, repeatedly condemned by Congress and the courts,[99] under which an Indian, over his own energetic protest, may be stripped of the trust protection which the Federal Government has extended over his individual land holdings. Once this happens, the Indian's land is subject to taxation, levy, and execution, and experience shows that such "forced patent" lands remain in Indian ownership for only brief moments.[100]

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[95] Choate v. Trapp, 224 U.S. 665 (1912). See also Morrow v. United States, 243 Fed. 854 (8th Cir. 1917); Solicitor's Opinion on Taxability and Alienability, 59 Lands Dec. 348, 352 (1922); OPS. SOL'R OF THE DEP'T OF INTERIOR M. 25737 (March 3, 1930); OPS. SOL'R OF THE DEP'T OF INTERIOR M. 13864 (Dec. 24, 1924).

[96] This appears in § 6 of the California bills cited in note 41 *supra*.

[97] Reservations for the "use" of named individuals are included in the unpublished but ratified Treaty of June 1, 1798, with the Oneida Nation (Archives No. 28). The "trust" formula was generally established by § 5 of the General Allotment Act of 1887, 24 STAT. 388 (1887), 25 U.S.C. § 348 (1946).

INDIAN BUREAU ORGANIZATION

Underlying and emphasizing the shift of Indian policy during the past three years is a significant shift in the structure of the Interior Department and the Indian Bureau. The direction of this shift has been consistently towards ever-increasing power in the hands of Indian Bureau officials. Checks on powers formerly resting with Interior Department officials, with Congress, with the Indians themselves, and with interested civic groups, have been broken down, step by step, to a point where the Commissioner of Indian Affairs is, for most practical purposes, a law unto himself who looks nowhere but to his own will and conscience for direction.

This shift in the power structure of the Indian Bureau may be measured by analyzing (a) the Bureau's relations with the Indian tribes it purports to serve, (b) the relations of the Commissioner to his superiors and subordinates in the Interior Department, and (c) the Bureau's relations with the general public.

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[98] This appears in § 5 of the California bills and in § 4 of the Oregon bill, all cited in note 41 *supra*.

[99] Pursuant to 34 STAT. 182 (1906), 25 U.S.C. § 349 (1946), which authorized the Secretary of the Interior to issue a patent in fee simple "whenever he shall be satisfied that any Indian allottee is competent," the Indian Bureau frequently issued such patents without the consent of the Indian concerned, and often over his protest. This policy of "forced patents" was declared illegal in United States v. Nez Perce County, 95 F.2d 232 (9th Cir. 1938); United States v. Benewah County, 290 Fed. 628 (9th Cir. 1923); United States v. Ferry County, Wash., 24 F. Supp. 399 (E.D. Wash. 1938). By 44 STAT. 1247 (1927), 25 U.S.C. § 352a (1946), Congress provided for the cancellation of patents issued without Indian consent; and by 54 STAT. 298 (1940), 25 U.S.C. § 352c (1946), Congress authorized appropriations to repay to Indians taxes paid on such lands. See also MERIAM, *op. cit. supra* note 2, at p. 477; and COHEN, HANDBOOK 25-6, 109, 258-9.

[100] See SCHMECKEBIER, THE OFFICE OF INDIAN AFFAIRS, ITS HISTORY, ACTIVITIES, AND ORGANIZATION 151 (1927).

Bureau Relations with Indian Tribes

Tribal controls. Mounting evidence of the misuse of tribal funds by the Indian Bureau, brought to light by the Senate Survey of Conditions of Indians which began in 1928 under Senator Frazier and was continued under Senator Wheeler,[101] inspired a series of congressional acts establishing tribal veto power over various activities of the Indian Bureau. Beginning with the Act of March 4, 1933,[102] authorizing modification of timber contracts, and the Act of May 31, 1933,[103] which gave the Pueblos of New Mexico a veto power over Indian Bureau expenditures of Pueblo funds, the formula of Indian consent was written into a long series of Indian statutes.[104] Even the organic act of the Indian New Deal, the Act of June 18, 1934,[105] was by its terms inapplicable to any reservation where a majority of the Indians voted against it. In the eyes of so-called "expert administrators," provisions for Indian consent in Indian bills are subversive of clarity, good order, and authority.[106]

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[101] *Hearings before a Subcommittee of the Senate Committee on Indian Affairs pursuant to S. Res. 79*, 70th Cong., 2d Sess. (1928) *passim*.

[102] 47 STAT. 1568 (1933), 25 U.S.C. §§ 407a, 407b note (1946).

[103] 48 STAT. 108 (1933), 25 U.S.C. § 331 note (1946).

[104] See, *e.g.* the Mineral Leasing Act of 1938, 52 STAT. 347 (1938), 25 U.S.C. §§ 396 *et seq.* (1946). And see Annotations in 25 U.S.C.A. §§ 390, 592, 593, 601, 613, 622 (Supp. 1951).

[105] 48 STAT. 984 (1934), 25 U.S.C. §§ 461 *et seq.* (1946).

[106] "The Southwest Indian News Letter, issued by the Institute of Ethnic Affairs, a research organization headed by Professor John Collier, former Indian Commissioner, had this comment on Commissioner Myer's activities in the Bureau:

> 'The Commissioner feels that he is being unfairly accused of engaging in a subtle attempt to enlarge and expand the control of the Bureau over Indians.
>
> 'For he apparently does not comprehend the effect of: insisting that tribal governing bodies obtain special permission from him to send delegates to Washington; refusing to see some delegates when they make the long trip to the capitol, *e.g.*, the 'run-around' given the Standing Rock Sioux; opposing, and even disdaining, budgetary recommendations submitted by the Indians; objecting to a provision which would have required the consent of the Indian tribe concerned before an Indian hospital could be transferred to any non-Indian agency; making personnel changes without consulting, and even against the wishes of, the Indians, *e.g.*, the attempted removal of Superintendent [E.R.] Fryer [one of the two who resigned] from the Carson Agency; attempting to coerce the Indians into endorsing bureau programs without fully informing them of the plans and programming; and only half-heartedly endorsing the extension of the Indian Claims Commission, while recommending that the extension of time be for only six months.'"

N.Y. Times, Nov 2, 1951, p. 17.

Not a single bill sponsored by Commissioner Myer during his term of office has contained an escape clause for Indians who might object to it, even in cases where Congress and the President have supported such an escape clause.[107]

Bills giving the several states the power to extend state criminal laws over Indians on Indian reservations (who are now subject to federal and tribal laws) have been introduced in Congress year after year for almost a century, and with rare local exceptions such bills have been opposed by Indians and defeated.[108] As recently as 1949, President Truman vetoed a bill that would have extended state criminal laws to the Navajo and Hopi Indians without their consent, on the ground that this bill violated "one of the fundamental principles of Indian law accepted by our Nation, namely, the principle of respect for tribal self-determination in matters of local government."[109] Within the past two years Indians have waged a successful drive to have several similar bills modified to include an Indian consent clause.[110] Commissioner Myer opposed this arrangement, notwithstanding the Indian Bureau's pledge of a few months earlier that "our proposal in this respect [state jurisdiction] will provide for a referendum of the Indians of a reservation before transfer becomes final."[111]

In place of the old Jeffersonian formula of "consent" of the governed one finds the Indian Bureau now using the formula of "consultation."[112] In practice, "consultation" means trying to persuade the Indians to go along with a Bureau program; if the effort fails, then the Bureau asks Congress to adopt the Bureau program anyway. The Commissioner's Withdrawal Memorandum of August 5, 1952, phrases the new formula in familiar terms:

> ". . . [A]greement with the affected Indian groups must be attained if possible. In the absence of such agreement, however, I want our differences to be clearly defined and understood by both the Indians and ourselves. We must proceed even though Indian cooperation may be lacking in certain cases."

Transfer of bureau powers. In 1934, Congress laid down two paths by which powers vested in the Indian Bureau could be terminated or transferred.

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[107] See text section labeled "Access to Hospitals," pages 358-9 *supra*.

[108] See COHEN, HANDBOOK 16, 147.

[109] The President's veto message of S. 1407, dated Oct. 17, 1949, appears at 95 CONG. REC. 14784 (1949). After the veto, the bill was redrafted so as to eliminate the state law and order provisions to which the Navajo had objected, and as amended was passed and signed by the President. 64 STAT. 44 (1950), 25 U.S.C. §§631-640 (Supp. 1952).

[110] See proposals in *Hearings before House Subcommittee on Indian Affairs on H.R. 459, H.R. 3235, and H.R. 3624,* 82d Cong., 2d Sess. (1952). The House passed H.R. 459 with an Indian consent clause added to the bill. The Senate took no action; and so the problem was passed on to the next Congress.

[111] Address by Acting Commissioner of Indian Affairs William Zimmerman, Jr., before Home Missions Council, January 12, 1949, p. 5.

[112] *Hearings, supra* note 110, at 26.

Under Section 17 of the Act of June 18, 1934,[113] and under similar provisions of law applicable in Alaska and Oklahoma,[114] all Bureau powers over tribal property could be transferred to tribal corporations. Under the Johnson-O'Malley Act of 1934,[115] all welfare services performed by the Indian Bureau could be turned over to local state, county or municipal agencies. By the use of these two methods, the powers that had been vested in the Indian Bureau until 1934 were being diminished year by year. By 1950, at least 84 tribes in the continental United States had received charters of incorporation.[116] At least 80 of these charters provided for termination of Indian Bureau supervisory powers over leases, contracts, and other tribal economic affairs. In 78 of these 80 cases the stated period of supervision has already expired. In some cases, these supervisory powers were terminated instantly.[117] In other cases, termination resulted automatically at a fixed date.[118] In other cases, the Indians themselves, by popular vote, could fix the time when such supervisory powers were to expire, generally after five[119] or ten[120] years of corporate experience, but in some cases whenever the Indians thought the time appropriate.[121] In each of these 80 charters,[122] the Secretary of the Interior and the Commissioner of Indian Affairs voluntarily and finally relinquished any power to veto such an Indian decision.

In 1950, this process of giving up supervisory powers came to an abrupt and complete halt. On September 13, 1950, the Pueblo of Laguna asked for a corporate charter. After more than two years of petitions, letters to the Commissioner, appeals to Congress, visits to Washington, congressional committee hearings, and interviews with the Secretary, the Pueblo still has no answer to its request. Apparently no other Indian group has had any greater success during the past two years.[123]

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[113] 48 STAT. 984 (1934), 25 U.S.C. §§ 461 *et seq.* (1946).

[114] 49 STAT. 1250 (1936), 48 U.S.C. §§ 358a, 362 (1946) (Alaska); 49 STAT. 1967 (1936), 25 U.S.C. §§ 501-9 (1946) (Oklahoma).

[115] 48 STAT. 596 (1934), as amended, 25 U.S.C. §§ 452-5 (1946).

[116] In addition, at least 65 tribes or associations in Alaska had received such charters.

[117] See Charter of Organized Village of Kake, Alaska, ratified January 27, 1948. See also Charter of Aleut Community of St. Paul Island, Alaska, ratified June 12, 1950 (issued by the Department of the Interior on May 3, 1950).

[118] At least thirteen Oklahoma charters so provide. In every case the period of supervision has expired.

[119] At least twelve corporate charters so provide. In every case the period of required supervision has expired and further supervision is optional with the Indians concerned.

[120] At least 50 corporate charters so provide. In 49 of these cases the period of required supervision has expired.

[121] *E.g.*, Charter of Ft. Belknap Indian Community, ratified August 25, 1937.

[122] In addition to the termination of supervision cases noted in the preceding five footnotes, there are two charters with 15-year supervisory periods, one with a 20-year period, and one with a fixed date for the end of supervision. All of these periods except the 20-year period have expired.

When Commissioner Myer was accused in April, 1951, of doing nothing to transfer authority over tribal property to the tribes concerned, he had to go back to 1948, two years before his accession to office, for an example of such termination of Bureau authority. "As recently as February, 1948," he wrote, "the last vestiges of Bureau control over the Stockbridge-Munsee Indians of Wisconsin were relinquished."[124] This statement was something of an exaggeration. The Indian Bureau still insists that these Indians may not appropriate their own funds or issue a fishing license or hire an attorney or perform any of a dozen other normal corporate activities without the Bureau's approval. But it is true that in February, 1948, the Stockbridge-Munsee Band of Mohican Indians were able to get rid of a host of departmental supervisions by their own vote, pursuant to the terms of a charter issued by Secretary Ickes and Commissioner Collier in 1938. No similar charter, however, has been issued during the last two years to any other Indian tribe.

So, too, the process of delegating Bureau powers to local agencies seems to have undergone a sharp decline under Commissioner Myer. Under his predecessors, Indian Bureau education and health services had been turned over to state and local authorities wherever these authorities were willing to operate such facilities under the rather meager federal aid programs that are available. The critical field for transfer had thus moved to such services as extension work and road work. Here, however, the Commissioner has failed to take action. No new fields of service have been transferred to state authorities since Commissioner Myer took office, despite repeated appeals by Indians for such transfers.

Two excuses are generally given for the Indian Bureau's current refusal to surrender any of its powers. One is the "all or nothing" approach.[125]

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123. Anthony Leviero, Washington correspondent of the *New York Times*, wrote in that newspaper on Nov. 1, 1951:

> "Lip service has been given to the ultimate goal of emancipation for approximately 435,000 Indians for many years by successive national administrations and by members of Congress. Yet today the goal seems as far away as ever.
>
> "A survey of the situation as it is seen in policy-making Washington shows plainly that there exists no firm, definite program, no time-table for achieving the goal. Even more, there appears to be no real trend of policy, or even a vigorous drive among officials really to head for the goal." N.Y. Times, Nov. 1, 1951, p. 26, col. 1.

124. The quotation is from an unpublished answer to Cohen, *Colonialism: U.S. Style*, The Progressive, April, 1951, p. 16.

125. Commissioner Myer's denunciation of the "piecemeal approach" of various tribes to this problem of transfer of authority appears in his statement of March 9, 1951, in *Hearings before House Appropriations Committee on Interior Department Appropria-*

When this approach is used, Indians who want to take over control of their own funds, or credits, or cattle, or supervise their local extension service, or manage their own roads department are told by the Commissioner, in effect:

> "We are very glad to have you do these things, but first you must learn how to run a hospital because we want you also to take over the reservation hospital."

To the Indians, this looks like going to a grocery store to buy cabbages and having the grocer say:

> "Yes, we have some very nice cabbages and I'll be happy to sell them to you, but first you must buy a hospital."

This may be termed the Rebuff Courteous. On the reservation, if tribal lawyers are not present, Bureau employees are apt to use the Retort Churlish.

> "Your councilmen are talking about doing away with the Indian Bureau. If that doesn't stop, we're going to close down your hospital."

Bureau employees whose jobs are at stake, and who are well supplied with gasoline and expense money, are able to bring terrific pressure upon an Indian community to see that protests against Bureau extravagance are discouraged or that councilmen who voice such protests are not re-elected.

The second Bureau reply to those who urge that it transfer its authorities to local agencies is the fast buck pass to Congress: "This we would like to do, but Congress won't let us; why don't you get a law through Congress?" This approach is particularly useful when Congress is not in session. On the other hand, there is always the danger, when this approach is used, that the Indians will get a bill introduced by their representatives in Congress, in which case the Indian Bureau generally reveals its real attitude by opposing the bill.[126]

The Indian Bureau and the Interior Department

Departmental controls. The tendency of any government bureau to expand its power is vastly intensified when the people subject to the bureau's activities are without many of the normal avenues of protest, publicity, and legal redress. Many Secretaries of the Interior, across many decades, recognized this tendency to self-aggrandizement as particularly serious in the case of the Indian Bureau. They, therefore, required that all important Indian Bureau activities should be reviewed by the Solicitor and one of the Assistant Secre-

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tions for 1952, 82d Cong., 1st Sess. 1253 (1951). It is also elaborated in his speech of July 25, 1951, before the National Congress of American Indians: "[A] partial or piecemeal approach to the problem . . . will not work."

[126] *E.g., Hearings before House Subcommittee on Indian Affairs on Blackfeet Legislation,* April 15, 1952 (unpublished).

taries of the Department. For many years a Departmental Board of Appeals was available to Indians who sought review of an unjust Indian Bureau ruling. During the period when Nathan R. Margold was Solicitor of the Interior Department a vast number of proposed Indian Bureau rulings were withdrawn before issuance because the Solicitor was able to convince the Commissioner or the Secretary or Assistant Secretary that what some Bureau official wanted to do would violate the rights of the Indians. To the credit of Commissioners Collier and Brophy and Acting Commissioner Zimmerman, it must be said that these departmental overrulings were accepted without rancor and a serious effort was made to abide by them.

During Commissioner Myer's regime a very different situation has prevailed. In almost no case has a proposed Indian Bureau ruling been disapproved before issuance. In very few cases are such rulings even submitted to departmental review. The Departmental Board of Appeals has not been convened since 1947. When an Assistant Secretary showed a disposition to correct Commissioner Myer's illegalities, the Commissioner took vigorous exception and succeeded in having his Bureau placed under another Assistant Secretary who, except on two or three very unusual occasions, refrained from interfering with Indian Bureau decisions. On those occasions when he did overrule a Bureau decision, the Bureau paid little or no attention to the overruling.[127]

The attitude of the Department's Solicitor to Indian Bureau decisions was fully expressed in his opinion of July 2, 1951, upholding the Indian Bureau's rejection of the Pyramid Lake Paiute Tribe's attorney contract:

> "Perhaps I may venture the suggestion that, in passing upon the policy question in connection with each point, it is necessary to act in the light of two important principles. On one hand, there is the principle that the Department should foster local self-government among organized Indian tribes and, in dealing with such tribes in the exercise of the Department's power over them, should impose requirements on a tribe only when it seems necessary to do so in order to protect some important interest of the tribe or of the Government. On the other hand, there is the principle that, from the standpoint of stability of the administrative process, the head of a Department who has delegated authority and responsibility concerning a particular matter to a subordinate official ought not to overrule such official unless the latter has exceeded his authority, or has failed to conform to instructions issued by the head of the Department, or has made a grave error in judgment which is apt to have serious consequences. If the responsibility for deciding the present case rested upon me I believe that I should give the greater weight to the second of the two principles and affirm the Commissioner's action."

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[127] See, *e.g.*, discussion of discriminatory rules against Indian cattlemen, page 364 *supra.*

Professor Charles Black of Columbia Law School commented, "Or, to put it differently, if Indian progress to freedom collides with Departmental solidarity, choose the latter!"[128]

Abolition of Secretary's Indian Advisory Committee. Recognizing that effective Departmental control over Bureau activities required some source of information independent of the Bureau itself, Secretary Krug, on January 5, 1949, established his own Advisory Committee on Indian Affairs, which was expected to play a role similar to that of other advisory committees in petroleum, mining, and other fields of interest to the Interior Department. The persons appointed to this Committee were nearly all experts in the field of Indian affairs; two of them were Indians.[129] The functioning of such a committee threatened to subject Indian Bureau activities to Departmental criticism. This possibility was effectively eliminated. Since the appointment of Commissioner Myer in May, 1950, neither the Secretary nor the Commissioner has ever requested advice on any Indian question from this Advisory Committee on Indian Affairs. One of the members of the Committee has commented that the Committee membership is used strictly as window-dressing to convey the misleading impression that the Department's Indian policy is based on consultation with the groups represented on that paper committee.

In a late effort to secure advice from Indian leaders on Indian policy, Secretary Oscar L. Chapman set up a program of conferences with representatives of the larger tribal groups in the summer of 1952. As usual, the actual working-out of this program fell into the hands of the Commissioner, who made sure that a majority of the so-called Indian representatives called into Washington were picked by the Indian Bureau and not by the Indians. The conferences were thus largely attended by Indians who had been retired from tribal office because of their susceptibility to Bureau influence. Indians on the Bureau payroll or otherwise obligated to the Bureau did their best to convince Secretary Chapman that Commissioner Myer had the confidence of "right-thinking" Indians. Several tribes that were thus "represented"[130] against their will are still seething over this manifestation of Interior's disregard of the right of Indians to be represented by delegates of their own choosing.

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[128] Black, *Counsel of Their Own Choosing,* The American Indian, Fall, 1951, p. 8.

[129] The original membership of the Committee included: Oliver La Farge, Chairman, President of the Association on American Indian Affairs, Santa Fe, New Mexico; Louis R. Bruce, Vice-Chairman, New York; Ruth M. Bronson, Secretary, Executive Secretary, National Congress of American Indians; Mark A. Dawber, Executive Secretary, Home Missions Council of North America, Inc., New York; Jonathan M. Steere, President, Indian Rights Association, Philadelphia; E. P. Carville, former Governor and Senator of Nevada; W. Carson Ryan, Department of Education, University of North Carolina, Chapel Hill, N.C.; Clyde Kluckhohn, Department of Anthropology, Harvard University, Cambridge, Mass.; Roland R. Renne, President, Montana State College, Bozeman, Mont.; Ruth Kirk, Chairman, Indian Committee, General Federation of Women's Clubs, Gallup, New Mexico; and Barry Goldwater, Phoenix, Arizona.

[130] Department of Interior, Press Release, June 27, 1952, in one paragraph denies that the Indian consultants represented their tribes, and in another paragraph lists "the consultants and the tribes they represented."

Area offices. One of the saving graces of the old Indian bureaucracy was that most decisions of the Bureau were made by the reservation superintendent, who had to live with the consequences of his mistakes. Even the most hard-boiled of the old gun-toting military superintendents could not help absorbing some understanding of Indian problems and Indian psychology from his daily contacts with flesh-and-blood Indians. All this was swiftly changed by Commissioner Myer. Superintendents were quietly stripped of most of their powers—particularly the power to apportion funds and to hire employees, upon which most other powers inevitably depend. These powers were vested in "area directors," far removed from Indian reservations. Originally these directors were called "district directors."[131] When these positions were disapproved by Congress,[132] they were re-christened "regional directors." When Congress again objected,[133] they were renamed "area directors." This indicates the effective scope of congressional review of a determined bureaucracy.

According to Indian Bureau theory, the area directors were supposed to be exercising powers delegated by the Washington officials, and the whole process was officially described as "bringing administration closer to the reservations."[134] In practice, however, the area directors found it much easier to take over authority from the reservation superintendents they were supposed to supervise than to take over authority from the Commissioner of Indian Affairs or the Secretary of the Interior. As superintendents were gradually reduced to the rank of clerks, Indians found it harder and harder to communicate their views to the Bureau.[135] The protests of Indians throughout the country against area offices to date have been in vain.

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[131] Rep. Sec'y of the Interior, 1946, p. 352 (1946).

[132] H.R. Rep. No. 2038, 80th Cong., 2d Sess. 14-15 (1948).

[133] *Hearings before House Appropriations Committee on Interior Department Appropriations for 1950*, 81st Cong., 1st Sess. 591 (1949).

[134] See *Hearings before Senate Appropriations Committee on Interior Department Appropriations for 1951*, 81st Cong., 2d Sess. 399 (1950).

[135] Former Indian Commissioner Collier described the new situation in these terms:

> ". . . Mr. Myer claimed that the Superintendents had just as much responsibility as they have ever had. Again, the Commissioner missed the point. It is not a question of how much power the local agency has, but of how much power the Area Office possesses. To the extent that the Area Directors exercise any powers, the administration is removed to that degree from the supervision and control of the Indians. At the local agency level, the Indians may exert their political pressure directly. In Washington, the Indians may exert such pressure indirectly through their Congressmen. But there is no way in which the Indians may effectuate political decisions at

Bureau personnel. When Dillon Myer took on the Commissionership, he assumed a responsibility for carrying out thousands of long-standing obligations of the United States, obligations which are often remembered only by the Indians to whom they are due. In past decades the failure to carry out such obligations had bred lawsuits running to the hundreds of millions of dollars.[136] It had bred resentments of even larger proportions. Sometimes these violations of obligations had arisen out of white contempt for Indians and Indian rights. More often, they had arisen out of invincible ignorance of the complicated web of treaties, statutes, and agreements that make up our federal Indian law. Mr. Myer, coming to this field from the War Relocation and Federal Housing Authorities and the State Department, with no prior knowledge of Indians or Indian law, badly needed the help of men who were thoroughly familiar with the intricacies of Indian administration, the commitments of the Federal Government, and the feelings of nearly half a million Indians.

Commissioner Myer adopted a course, however, which quickly drove from the Bureau those officials who could have been of greatest service to him and to the Indians. The men in the Indian Office who knew most and cared most about Indians were summarily dismissed. Assistant Commissioner Zimmerman, after 17 years of faithful service, was swiftly replaced by a former WRA official who knew nothing of Indians. Shortly thereafter, the Bureau's Chief Counsel, Theodore H. Haas, who had been largely responsible for the preparation of the comprehensive *Handbook of Federal Indian Law,* was removed and replaced by another ex-WRA official. Having thus deprived himself of access to what had been the memory and the conscience of the Indian Bureau, Commissioner Myer embarked upon courses of action which led to the resignation of the key men who had been active in shifting the center of power from Washington offices to local Indian communities: Willard H. Beatty, Chief of the Branch of Education; Joseph C. McCaskill, formerly Assistant Commissioner and Manager of the Indian Arts and Crafts Board; Walter V. Woehlke, formerly Special Assistant to the Commissioner; E. Reeseman Fryer, Superintendent of the Nevada Indian Agency; John Provinse, Assistant Commissioner; and D'Arcy McNickle, the Indian Chief of the now emasculated Division of Tribal Relations. On the reservation level, some of the best of the older Indian superintendents have been pushed out

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the Area Office level, other than by making numerous expensive trips, and with the knowledge that the final decision is in the central office at Washington. The Area Offices thus do take 'the administration of [Bureau] programs farther away from the Indians.'" Southwest Indian News Letter, June-Aug., 1951, p. 9.

[136] See, *e.g.,* cases cited in notes 61 and 77 *supra.* There are now pending before the Indian Claims Commission more than 350 claims against the United States filed by Indian tribes. Almost all of these are based upon allegedly illegal, inequitable, or dishonorable acts of Indian Bureau officials.

of the service; some have retired; increasingly their places have been taken by former detectives and prison wardens.[137]

The Indian Bureau and the Public

Secrecy. For a good many years prior to 1950, the Interior Department pursued a "goldfish bowl" policy in Indian affairs. Indians and their attorneys, interested civic organizations, students and scientists, were all welcome to participate in conferences, to examine files and documents, and to discuss proposed policy statements and regulations in advance of their promulgation. In fact, special efforts were made to induce such consideration and discussion of difficult problems, and proposed regulations of importance were usually sent out to all interested groups with a request for comment prior to the final decision on their issuance.

Under Commissioner Myer this practice was quickly changed. Proposed policy statements and regulations were no longer submitted to Indians or other interested bodies for prior consideration.[138] Several long-established organizations, for example, which had given much helpful advice to several of Commissioner Myer's predecessors, urged Mr. Myer to hold up the promulgation of his proposed policy statement of November 9, 1950, on Indian attorney contracts until the problems raised by the proposed statement could be fully thrashed out. The offer was instantly rejected.[139]

Intelligent criticism of public affairs depends to a large extent upon public access to the facts. Commissioner Myer has withdrawn from public scrutiny the facts upon which public appraisal of his administration must largely rest. For example, the funds held in the United States Treasury to the credit of Indian tribes were a matter of public record until 1951, when requests by various Indian tribes, through their regular attorneys, for such information were refused by Commissioner Myer on a curious diversity of grounds.[140] Similarly, Commissioner Myer's memorandum of August 5, 1952, addressed to "All Bureau Officials," advocating legislative cancellation of treaty obligations and other trust obligations towards Indian tribes, was still being withheld from public view seven weeks after its issuance.

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[137] Thus a superintendent suspected of being too "soft" (*i.e.*, sympathetic) to the Indians and Eskimos of Alaska was replaced by a former F.B.I. agent, and a superintendent suspected of being too "soft" towards the Blackfeet Indians of Montana was replaced by a former warden of a W.R.A. detention camp.

[138] The drastic change in Interior Department policy in extending trust periods on individual Indian lands for only one year instead of twenty-five, for example, was consummated without prior notice to the Indian tribes concerned or to the various civic organizations interested in such matters. See text discussion under the section marked "Indian Trust Estates," pages 373-4 *supra.*

[139] Among the organizations which appealed to the Commissioner of Indian Affairs and the Secretary of the Interior for an opportunity to be heard before the new policy was promulgated was the Association on American Indian Affairs, which wired its appeal to Secretary Chapman on November 3, 1950, and mailed a more detailed statement to the Secretary on November 8, 1950. Secretary Chapman referred the matter to the Assistant Secretary of the Interior in charge of the Indian Bureau, who urged Commissioner Myer to hold off the contemplated policy statement; but the Commissioner declined to follow this advice.

During Commissioner Myer's administration more than a score of Indian tribes[141] asked the Interior Department for a full accounting of their funds. Each of these requests was refused. On May 27, 1952, the Indian Claims Commission unanimously held that the refusal of such information was illegal.[142]

Bureau reaction to criticism. An incidental, if not intended, consequence of draping iron curtains around traditional sources of public information is to make informed criticism of governmental activities both difficult and suspect. Since 1950, practically all informed criticism of Indian Bureau operations has been answered by attacks on the personal integrity of the critic or his informants.

Three days before the proposed attorney regulations were rejected by Secretary Chapman, Commissioner Myer described criticism of the proposals as "a campaign of defamation and distortion which was started by a few individuals who have attempted to becloud the real issues."[143] Before Congress turned down his proposed Indian Police Bill, the Commissioner described criticism of the bill as "vicious misrepresentations."[144] Indian resolutions calling attention to corruption and waste in the Indian Bureau he has described as the work of scheming attorneys, notwithstanding the testimony of the Indians concerned that lawyers had nothing to do with the resolutions.[145]

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[140] Three different reasons for not supplying such information are given in the letter of Executive Officer Greenwood to Felix S. Cohen, dated April 20, 1951, and the letter of Commissioner Myer to Senator Hayden, dated May 15, 1951.

[141] Such requests were made by the Pueblos of San Ildefonso, Santo Domingo, Santa Clara, Taos, and Nambe, in New Mexico; the Absentee Delaware, Eastern Shawnee, Peoria, Ponca, Potawatomi, Ottawa, Miami, Sac and Fox, and Iowa, in Oklahoma; the Hualapai and Papago of Arizona; the Yuma Tribe of California; the Kickapoo, Sac and Fox, and Iowa, in Kansas and Nebraska; the Six Nations of New York; the Sac and Fox of Iowa; and the Fort Belknap Community of Montana.

[142] "In its dealings with the tribe," the Commission held, "the defendant kept the only records of these transactions as a self-imposed duty to its illiterate and incompetent wards and thereby became accountable to them for the manner in which it discharged its treaty, and other assumed and Congressionally imposed obligations." Iowa Tribe v. United States, 2 Ind. Cls. Comm. 167 (1952).

[143] Statement of Commissioner Myer at hearings before a Subcommittee of the Senate Committee on Interior and Insular Affairs, Jan. 21, 1952 (unpublished).

[144] See note 47 *supra*.

[145] One such charge by Commissioner Myer appears in *Hearings before Subcommittee of House Appropriations Committee on H.R. 3790*, 82d Cong., 1st Sess. 1264 (1951). A specific denial of this charge by the Indians concerned appears in *Hearings before*

So, too, the Commissioner's numerous letters to members of Congress who report Indian grievances, to editors who criticize his activities, and to thousands of private citizens who have voiced complaints concerning Bureau delays and mistakes, regularly charge that the Bureau's critics are either themselves dishonest or the dupes of dishonest Indian lawyers. Thousands of pages' worth of such personal attacks have been circulated at Government expense all over the United States.[146] Of course, occasionally Commissioner Myer is caught in a misstatement and is forced to apologize or retract.[147] This, however, does not deter his subordinates from continuing to circulate such misstatements.[148]

CONCLUSION

"Judges," said Holmes, "are apt to be naif, simple-minded men."[149] This is also true of people who are not judges. Therefore, most people who are restless under regulations they resent find comfort in the assurance that the regulations are merely temporary. Sophisticated administrators know this and are apt to use the slogans of "liquidation" whenever they are particularly anxious to expand their own regulatory powers. The classic example of this process, of course, is the vast enlargement of state powers in the Soviet Union, which is officially justified as a necessary means to bring about "the withering away of the state." An example of the same process closer to home and easier to observe is the intensive power drive which the Bureau of Indian Affairs has been carrying on under the slogan of "winding up the Indian Bureau."[150]

Senate Appropriations Committee on H.R. 3790, 82d Cong., 1st Sess. 2192 (1951). Similar rebuttals to Commissioner Myer's allegations of undue influence on the part of lawyers were made by the Indians during the Hearings on Proposed Regulations to Govern Indian Tribal Attorney Contracts, transcript, pp. 84-5, 119.

[146] Former Secretary of the Interior, the late Harold L. Ickes, former Commissioner of Indian Affairs, John Collier, the head of the Association on American Indian Affairs, Oliver La Farge, and the former executive secretary of the National Congress of American Indians, herself an Indian and former Indian Bureau official, Mrs. Ruth Bronson, have been especially subjected to these campaigns of personal defamation at the American taxpayers' expense.

[147] See *Hearings before Senate Appropriations Committee on Interior Appropriations for 1952,* 82d Cong., 1st Sess. 2200-1 (1951).

[148] Letter from Paul L. Fickinger, Area Director, Billings, Montana, to members of the Blackfeet Tribe, dated May 9, 1951, and letter to attorney for the Blackfeet Tribe, dated June 11, 1951.

[149] *Law and The Court* in COLLECTED LEGAL PAPERS 295 (1920).

[150] In *Experiment in Immortality,* The Nation, July 26, 1952, the editor observed: "This time 'winding up the Indian Bureau' has meant in practice increased control over Indians' employment of attorneys, new restrictions upon trips to Washington by Indians with grievances, curtailment of the right of individual Indians to use or lease their own lands, and denial of the rights of Indian communities to spend their own funds or even to hold free elections."

The present Commissioner's use of "liquidation" language is particularly impressive to those who do not realize how often, in years gone by, such talk has gone hand-in-hand with vast increases of Indian Bureau powers and appropriations. On February 15, 1951, Congressman Cannon, Chairman of the House Appropriations Committee, made public the report of an investigation of the Bureau which he had ordered, ending with the sober conclusion:

> "In general terms the effectiveness of the management of the Bureau may be evaluated from the single statement that although the Bureau has, for many years, given lip service to the principle that its activities were pointed toward the eventual withdrawal of Federal supervision over Indian activities, the accomplishments have been nil."[151]

The "withdrawal" policies of Commissioner Myer have been stated, word for word, by several of his predecessor Commissioners during the past 160 years and in almost every case the alleged "withdrawal" plans were followed by a vast increase in Indian Bureau appropriations. In 1917, for example, the Commissioner of Indian Affairs issued a statement almost word-for-word identical with recent statements of Commissioner Myer, and added this comment:

> "This is a new and far-reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the Government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem."[152]

That was said in 1917, and that year Indian Bureau appropriations jumped 74%, from $17,570,284 to $30,598,093, according to figures published by the House Indian Affairs Committee in 1935.[153]

Similarly, Commissioner Myer's latest series of talks about "withdrawal"[154]

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[151] *Hearings of Subcommittee of House Appropriations Committee on Interior Department Appropriations for 1952*, 82d Cong., 1st Sess. 246, 258 (1951).

[152] Rep. Comm'r of Indian Affairs, 1917, p. 4 (1917).

[153] *Hearings before House Indian Affairs Committee on H.R. 7781*, 74th Cong., 1st Sess. 725 (1935).

One can go back even earlier and find that in 1834, the House Committee on Indian Affairs stated: "The present organization of the Department [referring to the Indian Department] is of doubtful origin and authority. Its administration is expensive, inefficient and irresponsible." H.R. Rep. No. 474, 23d Cong., 1st Sess. 2 (1834). Appropriations for this "expensive, inefficient and irresponsible" agency (the words are those used by the House Committee) were raised the next year, 1835, from $1,003,953 to $1,706,444, a raise in one year of 70%.

[154] The experience of one tribe with Indian Bureau withdrawal plans was graphically described at a Senate Interior and Insular Affairs Committee hearing, April 15, 1952:

"We have had 97 years of experience with program makers who came out on behalf of the Indian Bureau and sold us programs to do away with the Indian Bureau. Back in 1855 they sold us a 10-year program which was supposed to put us on our feet so that and "liquidation" was accompanied by a request for a 70% increase in 1953 Indian Bureau appropriations over the 1952 appropriations.

In long-range terms, we find that between 1851 and 1951, a century in which the Indian Bureau kept talking about working itself out of a job and turning over responsibility to the Indians, congressional appropriations to Indian tribes decreased by approximately 80%, while appropriations to the Indian Bureau (chiefly for salaries) increased by approximately 53,000.%.[155]

What is actually involved in the so-called "liquidation" programs which the Indian Bureau is now trying to sell Congress is most clearly revealed by the California "withdrawal" bills introduced on April 10, 1952.[156] The Indian groups of Southern California, according to the Chairman of the Senate Committee on Interior and Insular Affairs, "seem to be agreed that the proposed legislation would grant to the Interior Department vastly enlarged powers over California Indians and their property during the period of withdrawal."[157]

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we would no longer need the Indian Bureau. . . . Then in 1888 they sold us another 10-year program. . . . Then in 1896 they sold us another program for our 'civilization and improvement,'. . . that was supposed to get us out from under Indian Bureau supervision by 1906. Then in 1907 they sold us another program—this time a 25-year program—and the idea of that program was that after holding land in trust for us for 25 years, our Indians would all be equipped to handle our property as individuals without further Indian Bureau restrictions. The last program that the Indian Bureau sold us was a five year plan that was inaugurated around 1922. Remember this was 6 or 7 years before the first Russian Five Year Plan, so nobody can accuse the Indian Bureau of copying from the Russians. Whatever copying was done was the other way around.

"Now if you look over all these programs for liquidating the Indian Bureau on the Blackfeet Reservation, you'll find that they all resulted actually in making the Indian Bureau a little fatter and making our own land holdings a little leaner. Now after 5 Indian Bureau programs for the Blackfeet reservation, 3 ten year programs, 1 twenty-five year program and 1 five year program, our people are left with less than 2% of the land we owned 97 years ago. The other 98% was taken by the Indian Bureau. During this period, Blackeet per capita wealth has declined by at least 67%. So you gentlemen can understand why the Blackfeet are very much worried at the prospect of having the Indian Bureau send out another expert program-maker from Washington to come out and improve us any further."

155. Much of the increase represents useful services of health and education, but because of the extensive use of health and education funds for general Bureau administration, it is impossible to determine how much of this increase is actually spent for useful public services. In the Appropriation Act of February 27, 1851, Congress appropriated $121,500 to the Indian Bureau and $751,359.80 to the Indians. In the Appropriation Act of August 31, 1951, Congress appropriated $65,000,000 to the Indian Bureau and $151,020 to the Indians. In other words, Congress in 1851 gave the Indian Bureau discretionary control over the expenditure of only about 20% of Indian appropriations, and made 80% of its appropriations payable directly to the Indian tribes (either in cash or in goods or services specified by the tribes). By 1951, the portion of the Indian appropriation which was put under the discretionary control of the Indian Bureau had been raised from 20% to 99 75/100%, and the portion which was payable directly to the Indian tribes had been reduced from about 80% to less than ¼ of 1%.

156. See note 41 *supra*.

157. Letter of Senator Joseph C. O'Mahoney, dated July 7, 1952.

Faced with evidence that an administrator's drive for enlarged powers moves in a direction totally opposed to his professed ideals, many observers explain this inconsistency by resort to a theory of bureaucratic stupidity or hypocrisy.[158] Under the influence of this theory and the traditional American penchant for blaming national ills on personal devils, there has arisen the doctrine that the only good Indian Commissioner is a dead one. But the problem of bureaucratic aggrandizement has deeper roots than one will find who looks only to the personality or background[159] of individual administrators. For an entire generation American teachers have been urging upon students and citizens the desirability of increased scope for the wise discretion of administrative experts. Those human beings whose lives are most directly affected by that discretion—Indians, immigrants, and government employees—are now reaping the harvest of that teaching. Changes of personnel may relieve some of the harshness and heartlessness of recent Indian Bureau assaults on Indian liberties and Indian property. But a reversal of this trend is not likely to come until Americans assume either a higher respect for inexpert human beings or a lower respect for expert administrators.

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[158] The following divergent appraisals cannot all be true, but together they indicate the range of opinion concerning the conduct of the Indian Bureau under its present leadership:

> "I think Dillon Myer is a man of unimpeachable integrity. . . . I think he is also a very able administrator, one of the most able in our government. . . ." Rep. Toby Morris, Chairman of House Subcommittee on Indian Affairs, in *Hearings before House Subcommittee on Indian Affairs on H.R. 459,* 82d Cong., 2d Sess. 54 (1952).
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> "A blundering and dictatorial tin-Hitler tossed a monkey wrench into a mechanism he was not capable of understanding." Harold L. Ickes (who brought Mr. Myer into the Interior Department and recommended him for the Commissionership), in New Republic, Sept. 24, 1951.
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> "Is he not the same gentleman who handled the Japanese detention camps and did not the military police testify that they had more trouble with him than they had with all the Japanese combined? Is not this the same Dillon Myer who bungled the housing business? Is he not the same gentleman who was in charge of this inter-American relations program and made a mess of that?
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> "I am not suggesting corruption or graft. However, I am not only suggesting but I am charging gross incompetence and mismanagement of this bureau. His past performance is a guarantee of inefficiency here." Statement by Rep. George H. Bender, 97 CONG. REC. 4374 (1951).
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> "I have never seen any direct proof here on the floor of the House or in the Committee of the Whole which would reflect in the slightest upon the integrity of Commissioner Dillon Myer." Rep. John J. Rooney, in 97 CONG. REC. 4376 (1951).

[159] Commissioner Myer, for example, came to the Bureau of Indian Affairs with a background as administrator of the War Relocation Authority, whose management of the detention camps for Americans of Japanese ancestry during World War II was characterized by Judge Denman, speaking for the Court of Appeals for the Ninth Circuit, as "unnecessarily cruel and inhuman treatment" and "in major respects as degrading as [that] of a penitentiary and in important respects, worse than in any federal penitentiary." Acheson v. Murikami, 176 F.2d 953, 954 (9th Cir. 1949). Justice Douglas, speaking for the Supreme Court, further pinpointed the racist character of W.R.A. administration, in the course of an opinion in which the Court invalidated regulations enforced by Director Myer, by declaring that the Authority had no right "to assume that the Congress and the President intended that this discriminatory action should be taken against these people wholly on account of their ancestry even though the Government

It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. In fact, the Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith. Here, as in other parts of the world, the undermining of that faith begins with the glorification of "expert administrators" whose power-drives are always accompanied by soft music about "the withering away of the state" or the ultimate "liquidation" of this or that bureau.

It is not cynicism, but simple realism, to note that people whose freedom is being increasingly restricted want the assurance that some day, somehow, the restrictors of freedom will be liquidated or withered away. And certainly it is easier for administrators to act "efficiently" (in their own eyes) or "ruthlessly" (in other's eyes) if they console themselves with the assurance that they are helping, in the long run, to bring about a society in which coercion will disappear. What they forget, and what we need another John Maynard Keynes to remind us of, is that in the long run we are all dead, and that while the means we use may be moulded by the ends we seek, it is the means we use that mould the ends we achieve.

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conceded their loyalty to this country." *Ex parte* Endo, 323 U.S. 283, 303-4 (1944). See also LEIGHTON, THE GOVERNING OF MEN 152 (1945); Rostow, *The Japanese American Cases—A Disaster,* 54 YALE L.J. 489 (1945).

An unpublished study by the Bureau of Ethnic Affairs, of which former Commissioner John Collier is president, has already described Commissioner Myer's "withdrawal" program for the Indians as "similar to the authoritarian, racist and stereotyped administration which he directed for the Japanese-Americans in World War II." In both situations, Commissioner Myer embarked upon a relocation program "emphasizing resettlement to the exclusion of other considerations and . . . discouraging directly or indirectly all efforts at community building on the ground that such would . . . operate against resettlement." *Ibid.* In both situations, an administrator has thought he knows best where other American citizens should live and what they should do, and has arranged that the entire force of government will operate to make people do what he deems to be in their best interests. Commissioner Myer thus seems intent upon repeating, in peacetime, what has been aptly described as "Our Worst Wartime Mistake." Rostow, *Our Worst Wartime Mistake,* 191 HARPER'S MAGAZINE 193 (1945).

D. "Lo, the Poor Indian"

(By Ralph Nader, from the New Republic, Mar. 30, 1968)

The cry of "Lo, the Poor Indian" resounded once again from Washington this month—this time in the form of a special Presidential message to Congress. Like a torrent of previous statements on the "Forgotten American" flowing from the Department of Interior, the President said most of the right things and used most of the compassionate adjectives. As in former years and former administrations, emphasis was placed on self-help, self-determination, a higher economic standard of living, better education, improved health care, manpower training, new roads, and a bill of rights for the 400,000 reservation Indians.

Is there anything new here, other than further action-displacing sympathy that has bred a hard skepticism into most Indians long resigned to poverty in perpetuity? Clearly, a direct White House commitment to Indian betterment, for the first time, gives the mission greater visibility and importance. There is a 12-percent increase in overall Indian appropriations requested of Congress for fiscal year 1969. But beyond that, the President's message avoided dealing with the enduring organizational dry rot upon which these programs are being advanced; namely, the Bureau of Indian Affairs (BIA).

One hundred and nineteen years ago, the BIA was established in the Department of Interior with both presumed and actual missions. The former dealt with improving the lot of the Indian; the latter with facilitating the encroachment on or exploitation of Indian lands and resources. Under the Bureau's aegis and congressional directive, the Indian land base shrunk from 150 million acres to the present 53 million acres—about the size of New England. For generations the Bureau presided over people without a future. Indians were called "wards," were culturally devastated, physically pushed around, and entwined in the most intricate web of bureaucratic regulations and rulings ever inflicted anywhere in this Nation's history. They still are.

In the meantime, the BIA has prospered, growing to its present size of approximately 16,000 employees providing the services of a Federal, State, and local government in one administrative bundle. Together with smaller programs in Indian health (under the Public Health Service) and antipoverty programs (in OEO), current fiscal year appropriations for Indians totaled about $460 million or an average income per reservation family of some $5,600 if paid out in cash. (The average family income is $1,500 per annum.)

The Indian budget has been increasing at a rate that has doubled in the past decade. Yet the picture on the reservations is drab and grim. The present poverty tally is a 40-percent unemployment rate (with much underemployment), grossly dilapidated housing, at least 30-percent illiteracy, two-thirds the life expectancy, and less than a third of the average income of other Americans, rampant disease, including a tuberculosis incidence 7 times the national average.

Anyone who has followed Indian affairs finds these figures to be a dreary redundancy of past recitations. With the exception of some advances in Indian health, reservation conditions remain as bad or worse than 10 or 20 years ago. In the past decade a new dimension of despair has emerged in the form of 200,000 Indians in city slums such as Los Angeles, Denver, and Minneapolis. But the BIA continues to exude fads of hope—whether it is relocation away from the reservations, tourism, mineral development, and the latest unfilled expectation—bringing industry to the reservations.

Prior to the President's message, the White House rejected the major recommendation of the President's Task Force on American Indians to transfer primary responsibility for Indian affairs from the Secretary of Interior to the Secretary of Health, Education, and Welfare. The task force, in its still secret 104-page report completed in 1966, urged the shift to HEW on the grounds that 75 percent of total Indian appropriations is allocated to health, education, and welfare functions. About 53 percent of the BIA budget ($250 million in fiscal 1968) goes toward its education function on the reservations. With responsibility for Indian health services already in HEW, the task force diplomatically concluded by emphasizing that "HEW program emphasis on conservation and natural resources."

Beneath such a placid rationale was the disgust and despair felt by many of the task force's members at the performance of the Bureau. The task force report took note of the widespread impression that "too many BIA employees were simply timeservers of mediocre or poor competence who remained indefinitely because they were willing to serve in unattractive posts at low rates of pay for long periods of time; that too many had unconsciously anti-Indian attitudes and are convinced that Indians are really hopelessly incompetent and their behavior reflects this assumption."

Building on numerous previous government (Hoover-type) critiques of the BIA's changeless ways, the task force ticked off a list of "discoveries" which shocked it: "The Bureau has no really hard data on population dynamics, income, employment, education * * * grossly inadequate data on which to base development plans. The Bureau does not even have one trained statistician on its staff at the present time [its emphasis]. * * * A related matter, equally shocking to the task force, was the total absence of any R. & D. funds in the BIA budget."

The task force, were it not divided into a majority and small minority position over shifting the BIA's functions to HEW, might have made a far stronger case against the BIA. Illustratively, Senator Robert Kennedy's subcommittee has pointed attention to the failure in quantity and quality of BIA reservation schools. Since these schools breed despondency, cultural inferiority, and alienation, it is not surprising that the dropout rate exceeds 50 percent. Mismanagement of BIA's supervisory responsibilities over land, timber, and water resources is legion. Last year BIA negligence led to major forest fires including one on the Mescalero Apache Reservation in New Mexico and another on the Quinault Reservation in Washington. BIA has managed to oversee the leasing and franchising of valuable reservation property rights and income opportunities into predominantly non-Indian hands. Even busboys in the restaurants on the Cherokee reservation are non-Indian; while Indian boys stand or sit idly by the roadside. Still, the BIA will not supply inquirers with a list of all the franchises given non-Indians on the reservations.

Secrecy in the BIA has bordered on the Byzantine. The complexities of the Government-Indian trust relationships, the undisclosed details of trust funds held in the Treasury Department, and the fractionated land heirship problem on reservations are all wrapped up in the BIA's endemic secrecy. It is not even possible to receive from the Bureau a reliable estimate as to the number of Indians on the reservations who are not serviced. Moreover, services are uneven in any given program and a few reservations become BIA "favorites" for one program or another, depending on the needs of Indian politics.

By not dealing with the fundamental malaise of the BIA, the White House will see its slightly refurbished proposals consigned to a limbo of resonant rhetoric. Quite possibly, the administration did not want to upset the intricate relationship which BIA has built up with grazing, timber, mining interests in the West, on the one hand, and its Indian associates on the reservations whom young Indian reformers call derisively "Uncle Tomahawks." Moreover, many Indian chiefs, fearing that change could place them at a greater disadvantage and perhaps activate the semidormant Federal termination of the reservation policy approved by congressional resolution in 1953, cling to the Bureau as the best bulwark against change. They could not be more accurate in this estimate of the Bureau's molecular inertia as well as the omnipresent pressure from several Congressmen for renewing the termination policy whereby reservations would be dissolved. Completed terminations on the Klamath Reservation in Oregon and Menominee in Wisconsin have had terribly adverse effects on Indians and their local economies. Without a land base, Indians will soon cease as distinct cultures.

Until the recent hearings by Senator George McGovern of the Senate subcommittee on Indian affairs, there have been no meaningful hearings on Indian poverty. There is no indication, however, that the Bureau will be subjected to a probing congressional oversight hearing. Criticism directed at the Bureau has been for not terminating reservations fast enough. James Gamble of the Senate subcommittee staff, with the apparent knowledge of Senators Henry Jackson, Democrat, of Washington, and Clinton Anderson, Democrat, of New Mexico, has long been the chief congressional worker for termination of Indian reservations and assimilation of the Indian into the mainstream of American life. The intensity of his animosity toward what he considers the privileged position of Indians and the BIA, which he says has a vested interest in this position, is almost startling. Not until 1967 did the Indian affairs subcommittee in the Senate and House lose their total grip on matters Indian. Both Senators Robert Kennedy and, to a lesser extent, Abraham Ribicoff, Democrat, of Connecticut, held hearings during the past year on Indian urban ghettoes and Indian education. Such a trend may lead to a fresh approach toward understanding at least the dimensions of the Indian problem and the priorities in policymaking.

For example, Prof. Gary Orfield of the University of Virginia believes the key focus should be in providing the Indians with jobs. Employment, he believes, would radiate the kinds of self-confidence and options that offer freedom of choice and break the vicious circle of poverty. "Even allowing for the rapid population growth, it is obvious that the basic economic problem of the Indian communities could be solved by the provision of 40,000 jobs. This would seem a small demand for a nation where civilian employment has increased an average of 723,000 each year from 1955 to 1965, and where the last 5 years the average increase has been almost 1.5 million per year." Analysis after analysis of the reservations' economic potential points to what has to be done to achieve this relatively modest objective. Provision of adequate loan funds to finance tribal enterprises and incentives to attract industry are often recommended. Conservation projects, recreational site developments, public housing construction and other community improvement projects can be more immediately implemented. There is solid precedent for success in job creation in the Indian emergency conservation work program during the thirties. Some 15,000 men were put to work in a few months time.

RALPH NADER.

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